TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1950

No. 330

AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, DIVISION 998, ET AL., PETITIONERS,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, HENRY RULE, AND J. E. FITZGIBBON, INDIVIDUALLY, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

PETITION FOR CERTIORARI FILED SEPTEMBER 22, 1950.

CERTIORARI GRANTED NOVEMBER 6, 1950.

#330

STATE OF WISCONSIN

IN SUPREME COURT

August Term, 1950. Case No. .....

AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, DIVISION 998, GEORGE KOECHEL and CHARLES BREHM, Individually and in Their Representative Capacity, Petitioners-Appellants,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, HENRY RULE and J. E. FITZGIBBON, Individually and as Members of the Wisconsin Employment Relations Board; CARL LUDWIG, H. HERMAN RAUCH and MARTIN KLOTSCHE, Individually and as Members of a Board of Arbitration, and THE MILWAUKEE ELECTRIC RAILWAY & TRANSPORT COMPANY, a Wisconsin Corporation, Respondents.

APPELLANTS' BRIEF
and
APPENDIX.

PADWAY, GOLDBERG & PREVIANT,
511 Warner Theatre Building,
212 West Wisconsin Avenue,
Milwaukee 3, Wisconsin,
Attorneys for Appellants.

St. Louis Law Printing Co., 415 N. Eighth St., St. Louis, Mo.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

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AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, DIVISION 998, ET AL., PETITIONERS,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, HENRY RULE, AND J. E. FITZGIBBON, INDIVIDUALLY, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

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MEMORANDUM DECISION.

(Venue and title omitted.)

This is an application by the plaintiffs, Amalgamated Association of Street Electric Railway and Motor Coach Employees of America, Division 998, George Koechel and Charles Brehm, individually and in their representative capacity, directed to this Court to review and set aside an Arbitration Order of April 9, 1949, entered by the arbitrators theretofore selected from a panel provided by Wisconsin Employment Relations Board. The facts in this case are not in dispute.

Review is sought pursuant to authority in Chapter 227 and Section 111.60 of the Wisconsin Statutes.

Challenge of unconstitutionality, invalidity and unreasonableness is directed to the entire structure of the arbitration process as provided by the Wisconsin Statutes in situations of this nature involving public utilities and their employees. Objection is raised to the jurisdiction of the State of Wisconsin, through the W. E. R. B., to invoke such arbitration process in this matter, and also to the legality of the award as made herein by the arbitrators.

The defendant The Milwaukee Electric Railway & Transport Company contends that this Court's jurisdiction is limited exclusively to a

consideration of whether the petitioners failed to
1839 show (1) that they were denied a reasonable opportunity to be heard, or (2) that the arbitrators exceed their powers, or (3) that the Arbitration Order is not supported by the evidence, or (4) that the Order was procured by fraud, collusion, or other unlawful means. The Transport Company further contends that since there has been no showing by the petitioners of any such items as contemplated by Sec. 111.60 of the Statutes the Court must, as a matter of course, affirm the award.

The petitioners maintain their right to be heard herein on two bases: (1) that an ultimate decision of arbitration proceedings is reviewable under Chapter 227, Wis. Stats. (Wis. Telephone Co. v. W. E. R. B., 253 Wis. 584 at 595); and (2) that Sec. 111.60, Wis. Stats., provides that an award may be reversed on the ground that the arbitrators exceed their powers. As to the latter position, the petitioners maintain that if the arbitration set-up or procedure is invalid, the arbitrators actually have had no authority in the matter, and hence exceeded their authority.

In the opinion of this Court, the stated positions of the petitioners are tenable, and this Court has jurisdiction herein.

Upon review of the record and proceedings herein the Court determines the following:

Sections 111.50 to 111.59 of the Wis. Stats. are not violative of Article I, Section 8, or Article VI of the United States Constitution

(United G. & C. Workers v. W. E. R. B., 255 Wis. 144). The law is not contrary to the 13th Amendment of the Constitution. (Ibid.)

The law is not violative of the 14th Amendment. (Ibid.) No prejudice was shown as to the personnel of arbitrators provided by W. E. R. B. No fraud, collusion, etc., is claimed.

The law is not violative of Article I, Sections 1, 2, 3, 4, 9 or 10 of the Constitution of the State of Wisconsin. (Ibid.)

The law is not violative of Article IV, Section 1, Article V, Section 1, or Article VII, Section 2, of the Wisconsin Constitution relating to executive, legislative and judicial powers (United G. & C. Workers v. W. E. R. B., supra; Pabst Brewing Co. v. W. E. R. B., 252 Wis. 346; Nash Kelvinator Corp. v. W. E. R. B., 247 Wis. 202; Public Service E. Union v. W. E. R. B., 246 Wis. 190).

The law is not violative of Article VII, Section 16, of the Wisconsin Constitution, which provides the conditions under which tribunals of construction and arbitration may operate when established by the Legislature (United G. & C. Workers v. W. E. R. B. supra).

The law is not violative of Article XIII, Section 9, of the Wisconsin Constitution (United G. & C. Workers v. W. E. R. B., supra).

1840 The law is not violative of Chapter 16 of the Wisconsin Statutes. It is within the province of the Legislature to authorize a

different method for the appointment of arbitrators than that provided for other positions.

The Statute is applicable to the company and the employees involved. This is not a railroad, but a street railway enterprise. Railroads are governed by the Federal Railway Labor Act. Section 151.145 of the United States Code, Annotated, provides: ". . . provided, however, that the term 'carrier' shall not include any street, interurban or suburban electric railway, unless such railway is operating as a part of a general steam railroad system of transportation." There is nothing in this record indicating that the company operates as part of a general steam railroad system.

The Wisconsin Employment Relations Board did not act in excess of its powers by ordering an arbitration proceeding when an injunction had been isued to prevent a strike. Neither an injunction nor a bann referred to in Section 111.62, Wis. Stats., is a guarantee against interference with an essential service. From the record it is clear that an emergency existed; collective bargaining had broken down; interruption of essential service to the public was threatened. True, the employees were willing to continue to bargain. **The company, apparently, was not willing to do so.** The Legislature has provided a method which was employed by the W. E. R. B. herein, where one of the public's essential services was about to be impaired.

The wisdom of this type of legislation is for the Legislature, not the Courts. In a situation other than one involving a utility, the employees would have been free not to work. By the use of such means they may have compelled the things which they demanded. In this situation, the petitioners, by operation of law, were deprived of such right. This is a legislative and not a judicial matter. It is within the province of the Legislature to enact this kind of law. When the provisions of this kind of law are substantially carried out, the Courts are obliged to sustain the action taken.

The jurisdiction of the Board of Arbitration did not terminate on February 3, 1949. An arbitrator cannot act until he is formally appointed. The time limitation is merely directory, and not mandatory.

The Board of Arbitration did not err with respect to the issues to be decided. Petitioners now contend that there was but one issue, i. e., whether or not the parties should be compelled to go to voluntary arbitration. The record indicates that there were many issues in dispute, all of which were decided by the arbitrators. Under Section 111.57, Wis. Stats., the arbitrators are obliged to render an award upon the issue, or the issues.

In view of the foregoing, the plaintiffs' peti-
1841 tion to set aside the award of the Board of Arbitration must be and hereby is respectfully denied.

A suitable order comformable with this memorandum decision shall be presented to this Court for its signature and for filing and service.

Dated at Milwaukee, Wisconsin, this 17th day of February, 1950.

Roland J. Steinle,
Circuit Judge.

1-3 **Admissions of Service.**

4 **Summons.**

5-15 **PETITION FOR REVIEW.**

(Venue and title omitted.)

The Petitioners above named by Padway, Goldberg & Previant, their attorneys, respectfully pray the Honorable Circuit Court in and for Milwaukee County, Wisconsin, to review and set aside the orders of the Wisconsin Employment Relations Board and a purported Board of Arbitration composed of Respondents, Carl Ludwig, H. Herman Rauch and J. Martin Klotsche, in the proceedings before both Boards entitled

State of Wisconsin.

Before the
Wisconsin Employment Relations Board.

In the Matter of the Petition of Milwaukee Electric Railway and Transport Company, a Wisconsin Corporation, For appointment of a Conciliator to Attempt to Effect Settlement of a Labor Dispute Between Milwaukee Electric Railway and Transport Company, Employer, and the Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, AFL, Union.	Case V No. 2579 PU-18.

6 and

Before the
Arbitration Board.

In the Matter of the Arbitration of the Dispute Between Milwaukee Electric Railway and Transport Company, a Wisconsin Corporation, and The Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, A. F. L., Union.	Case V No. 2579 PU-18.

including the Order Appointing Arbitrators issued by the Wisconsin Employment Relations Board on January 31, 1949, the Order Extending the Time within which such Arbitrators could act, and the Findings, Decisions and Award of the Board of Arbitration filed with the Clerk of the Circuit Court of Milwaukee County on April 11, 1949, and in support of their Petition, your Petitioners respectfully show to the Court as follows:

I.

That Petitioner, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Division 998 (hereinafter referred to as the "Union"), is a voluntary, unincorporated association of working men, commonly known as a labor union or labor organization situated in the City of Milwaukee, County

of Milwaukee, State of Wisconsin; such association has been organized for the purpose of aiding its members to become more skillful and efficient workers, the improvement of their wages, hours, and conditions of labor, the protection of their individual rights in the prosecution of their trade, and for such other objects for which working people may lawfully combine, having in view their mutual problems and interests.

II.

That the petitioner, George Koechel, is the President of the Union, and an employe of the Respondent, The Milwaukee Electric Railway & Transport Company, a Wisconsin corporation, on leave of absence, and brings this action as an officer of said "Union," and as an individual member thereof, and as an employe of the "Company," being first duly authorized so to do.

III.

That petitioner, Charles Brehm, is an employe of the Respondent, "Transport Company," and a member of the bargaining committee of the petitioner, "Union," and brings this action on his own behalf as well as on behalf of the employes of such "Company" represented by the "Union," being first duly authorized so to do.

IV.

That the respondent, Wisconsin Employment Relations Board (hereinafter referred to as the "Board"), is an administrative body created by Chapter 57, Laws of 1939.

V.

That the respondent, The Milwaukee Electric Railway & Transport Company (hereinafter referred to as the "Company"), is a Wisconsin corporation duly licensed to do business in the State of Wisconsin, having its office and principal place of business at 940 West St. Paul Avenue, in the City and County of Milwaukee, State of Wisconsin, and is engaged in the business of furnishing transportation for hire as a railroad company, and by railway in the City and County of Milwaukee, State of Wisconsin, employing in excess of 2765 employes in the operating and non-operating divisions of its business.

VI.

That substantially all of the employes of the respondent Company other than executive, supervisory, and office personnel have duly designated the petitioner Union as their collective bargaining representative, that such employes have a common and general interest in the subject matter of this action and are too numerous in number to make it practicable for them to join in this petition as individual parties petitioner, and this action is, therefore, brought by the Union and the petitioners, George Koechel and Charles Brehm, as representatives of all of such employes, and for their benefit.

VII.

That on or about the 31st day of December, 1948, the respondent Company petitioned the re-

spondent Board to appoint a Conciliator pursuant to Section 111.54 of the Wisconsin Statutes.

VIII.

That on the same date said Board ordered that a hearing be held on such petition on January 5, 1949. That on January 5, 1949 petitioners appeared and for the reasons hereinafter more fully set forth moved the Board to dismiss the petition of the Company and to terminate all further proceedings therein; that notwithstanding such objections the Board did on the 5th day of January, 1949 appoint one Nathan P. Feinsinger as a Conciliator pursuant to Section 111.54 of the Statutes.

That your petitioners thereafter participated in the conciliation proceedings subject to all of the objections they had previously made with respect to the validity and constitutionality of the law under which those proceedings were commenced and to the jurisdiction of the Board to appoint such Conciliator.

That on the 19th day of January, 1949 the Board extended the time during which the Conciliator may act until the 29th day of January, 1949.

That as petitioners are informed and believe said Conciliator on the 31st day of January, 1949 reported to the Wisconsin Employment Relations Board that the dispute between the parties continued to exist but such Conciliator did not at such time or at any other time report that in his

opinion the continuation of such dispute would cause or was likely to cause the interruption of an essential service.

IX.

That on the 31st day of January, 1949 the Board made and entered an Order, purportedly pursuant to Section 111.55 of the Statutes, appointing a Panel of Arbitrators from which a Board of Arbitration was to be selected for the purpose of determining said dispute, and directing hearing on such Order on February 3, 1949.

That petitioners appeared at said time and place and protested and renewed their objections to the jurisdiction of the Wisconsin Employment Relations Board and to the validity and the constitutionality of the Statutes under which it was then proceeding.

That at such proceedings on February 3, 1949, respondents, Carl J. Ludwig, J. Martin Klotsche, and H. Herman Rauch were appointed by the Wisconsin Employment Relations Board as a Board of Arbitration to hear and determine said dispute, after the Union (subject to its objections) and the Company had each stricken one name from a Panel of five men submitted to them by the Board.

X.

That thereafter said Board of Arbitration conducted hearings in which petitioners participated, specifically reserving their objections to the constitutionality and validity of the law and

to the jurisdiction and authority of the Board and the Arbitrators, and the Union proceeded subject, and without prejudice, to such objections and under the duress and the coercion of the law.

XI.

That on the 7th day of March, 1949 the Wisconsin Employment Relations Board extended
11 the time within which the Board of Arbitration could make and enter its decision to and including April 11, 1949. That petitioners objected to the jurisdiction and authority of the Board to enter such order under the Statutes and participated further in the proceedings subject to such objections as well as all other objections previously made.

XII.

That on April 9th, 1949 the Board of Arbitration served upon petitioners its Decision and Award, and on April 11th, 1949 such Decision and Award was filed with the Clerk of the Circuit Court for Milwaukee County.

XIII.

That all of the proceedings before the Wisconsin Employment Relations Board, all of the Orders entered by the Wisconsin Employment Relations Board, and the Decision and Award of the Board of Arbitration, and the Statutes under which such Orders, Proceedings, and Decisions were purportedly based are null and void and of no effect whatsoever because they are

(a) Contrary to constitutional rights and privileges;

(b) In excess of the statutory authority or jurisdiction of the Wisconsin Employment Relations Board, and the Board of Arbitration, and affected by other error of law;

(c) Made or promulgated upon an unlawful procedure;

12 (d) Unsupported by substantial evidence in view of the entire record as submitted;

(e) Arbitrary and capricious;

(f) Not supported by the evidence.

XIV.

That petitioners incorporate herein by reference the entire record in these proceedings commencing with the Petition for the Appointment of a Conciliator, and including all Motions and Objections and Affidavits made in the course of such proceedings, as well as all of the evidence, Exhibits, documents, and Records before the Board of Arbitration.

Wherefore, Petitioners pray:

1. That the Wisconsin Employment Relations Board be directed to file with the Clerk of the Circuit Court for Milwaukee County, as a part of the record, proceedings and petition in this case, all records, files, motions, affidavits, orders, reports, recommendations and transcripts of testimony in the proceedings before it commencing with the Petition for Appointment of a Conciliator filed by the respondent Company on Decem-

ber 31, 1948, including the proceedings before the Board of Arbitration.

2. That all orders, decisions and awards of the Wisconsin Employment Relations Board and the respondents, Carl J. Ludwig, J. Martin Klotsche, and H. Herman Rauch, be set aside and held for naught for the reasons and upon the grounds heretofore set forth, and more specifically elaborated on in the motions, affidavits and objections filed by petitioners in the proceedings before the Wisconsin Employment Relations Board and the Board of Arbitration.

Respectfully submitted,

Padway, Goldberg & Previant,
Attorneys for Petitioners.

14–15 Verifications.

16 Cover.

17–23 **Admissions of Service.**

24–25 **NOTICE OF APPEARANCE**
and
STATEMENT OF POSITION.

(The Milwaukee Electric Railway & Transport Company.)

(Venue and title omitted.)

Please Take Notice that we are retained by and appear for Respondent, The Milwaukee Electric Railway & Transport Company, in the above-entitled matter; that we demand that a copy of all further papers therein be served upon us at

our office, 773 North Broadway, Milwaukee, Milwaukee County, Wisconsin; and that said Respondent contends in respect of the Arbitration Proceedings referred to in Petitioners' Petition that:

1. The Petitioner was afforded full reasonable and unlimited opportunity to be heard.

2. The Respondent Board of Arbitration, individually and collectively, did not exceed its or their powers.

3. The Decision and Award of said Respondent Board of Arbitration is amply supported by the evidence.

25 4. Said Decision and Award was not procured by fraud, collusion or other unlawful means.

5. The Circuit Court should affirm the Decision and Award filed by said Respondent Board of Arbitration with the Clerk of said court on April 11, 1949.

6. The Circuit Court's jurisdiction in the above-entitled matter is expressly limited by the terms and provisions of Section 111.60 of the Wisconsin Statutes for 1947.

Dated this 4th day of May, 1949.

Shaw, Muskat & Paulsen,
Attorneys for Respondent, The Milwaukee Electric Railway & Transport Company.

26 Cover.

27-28 **Admissions of Service.**

ANSWER AND STATEMENT OF POSITION OF WISCONSIN EMPLOYMENT RELATIONS BOARD.

(Venue and title omitted.)

Now come the respondents, Wisconsin Employment Relations Board, L. E. Gooding, Henry Rule, J. E. Fitzgibbon, Carl Ludwig, H. Herman Rauch and J. Martin Klotsche, by their attorneys, Thomas E. Fairchild, Attorney General; Stewart G. Honeck, Deputy Attorney General, and Beatrice Lampert, Assistant Attorney General, and for the answer to and statement of position with respect to the petition for review in the above entitled matter, deny and allege:

1. Admit the allegations contained in paragraphs 1, 2, 3, 4, 6, 7, 8, 9, 10, 11 and 12 of said petition for review.

2. Admit that the Milwaukee Electric Railway and Transport Company is a Wisconsin corporation duly licensed to do business in Wisconsin and having its office and principal place of business in the City and County of Milwaukee and that it has 2,765 employees, but deny that it is engaged in the business of furnishing transportation for hire as a railroad company as alleged in paragraph 5 of said petition for review; with respect to such matters these respondents allege that said Milwaukee Electric Railway and Transport Company is engaged in furnishing public passenger transportation service to the public wholly within Milwaukee County, Wisconsin, by means of motor bus, street car and trackless trolley.

3. Deny the allegations contained in paragraph 13 of said petition for review and deny that any of the orders, decisions or awards of which review is sought are invalid or void on any of the grounds stated in said petition for review or for any other reason, but specifically allege that said orders, decisions and awards are valid and lawful.

4. Allege that these respondents have caused to be filed with the Clerk of Circuit Court for Milwaukee County as a part of the record herein, all its records, files, motions, affidavits, orders, reports, recommendations and transcripts of testimony in the proceedings before said respondent board commencing with the petition for appointment of a conciliator filed by the respondent company on December 31, 1948, including the proceedings before the Board of Arbitration.

Wherefore these respondents pray that the petition for review and setting aside the order, decisions and awards of the Wisconsin Employment Relations Board be dismissed.

Dated May 4, 1949.

Thomas E. Fairchild,
Attorney General,
Stewart G. Honeck,
Deputy Attorney General,
Beatrice Lampert,
Assistant Attorney General,
Attorneys for Wisconsin Employment Relations Board.

31 Cover.

32 Cover—Transcript of Record.

PROCEEDINGS
before
Wisconsin Employment Relations Board.

33-35 **Certificate of Wisconsin Employment Relations Board of Transmittal of Record.**

36-37 **PETITION OF MILWAUKEE ELECTRIC RAILWAY & TRANSPORT COMPANY FOR APPOINTMENT OF A CONCILIATOR.**

(Venue and title omitted.)

The petition of The Milwaukee Electric Railway & Transport Company, a Wisconsin corporation, represents and shows that:

1. The petitioner, The Milwaukee Electric Railway & Transport Company is a Wisconsin corporation and is a public utility employer within the meaning and purview of Subchapter III of Chapter 111 of the Wisconsin Statutes of 1947.

2. That the petitioner's principal office is located at 940 West St. Paul Avenue, Milwaukee 3, Wisconsin.

3. That the petitioner is primarily engaged in furnishing essential services within the meaning of Section 111.51 of the Wisconsin Statutes for 1947, to-wit, public passenger transportation to

the general public in the City and County of Milwaukee, Wisconsin.

4. That petitioner employs a total of approximately three thousand (3,000) employes.

5. That approximately two thousand seven hundred (2,700) of the operating and maintenance employes of the petitioner constitute a separate, collective bargaining unit and are represented for collective bargaining purposes by a labor organization, to-wit, Division 998 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, affiliated with the American Federation of Labor, hereinafter referred to as the "Union"; that the President of said labor organization is George Koechel, whose business address is Room No. 1406, at 231 West Wisconsin Avenue, Milwaukee 3, Wisconsin.

37 6. That the petitioner and said Union executed a general Labor Agreement on June 11, 1948, and that said agreement expires at midnight, December 31, 1948.

7. That said parties have attempted in good faith to negotiate the terms of a general labor agreement for the year 1949 but have not been able to reach agreement thereon; that said collective bargaining negotiations have reached an impasse and stalemate and that said parties will be unable to effect settlement of said dispute without the intervention, aid and assistance of the conciliation and/or arbitration processes and procedures provided for in Sections 111.50

through 111.65 of the Wisconsin Statutes for 1947.

8. That said petitioner believes that said dispute if not settled will cause or is likely to cause an interruption of said essential public passenger transportation services.

Wherefore, your petitioner requests that pursuant to Section 111.54 of the Wisconsin Statutes for 1947, the Wisconsin Employment Relations Board appoint a Conciliator to expeditiously meet with said parties for the purposes defined in Sections 111.54 and 111.55 of the Wisconsin Statutes for 1947, and that said Wisconsin Employment Relations Board issue its order requiring the maintenance of existing wages, hours and working conditions of employment between said petitioner and said employes pending the proceedings hereinabove requested.

Dated, at Milwaukee, Wisconsin, this 31st day of December, 1948.

The Milwaukee Electric Railway & Transport Company,

By R. H. Pinkley,
President.

38 Verification.

39 Cover.

40-41 **ORDER FOR HEARING ON PETITION FOR APPOINTMENT OF CONCILIATOR.**

(Venue and title omitted.)

A petition having been filed with the Wisconsin Employment Relations Board by the Milwaukee Electric Railway and Transport Company, a Wisconsin corporation, alleging that a labor dispute now exists between such employer and the Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, affiliated with the American Federation of Labor, which association is the collective bargaining representative for the employes of the employer in the operating and maintenance departments, whose occupations are listed in the wage schedule attached to the General Labor Agreement now in effect between the employer and such union, which agreement is dated June 11, 1948, and expires on December 31, 1948. It is further alleged by the petitioner that the collective bargaining process has reached an impasse and stalemate and that the employer and employes are unable to effect a settlement and requests the Board to appoint a conciliator pursuant to Section 111.54 of the Wisconsin Statutes.

41 The Board being desirous of obtaining information regarding the allegations of the petition to aid it in arriving at an opinion as to whether or not an impasse and stalemate has been reached, and further whether or not such dispute

if not settled will cause, or is likely to cause, the interruption of an essential service;

Now, Therefore, It Is

Ordered

That a public hearing on such petition will be held at the Court House in the City of Milwaukee, Wisconsin, on January 5, 1949, commencing at ten o'clock in the forenoon. At that time the Board will consider the petition of the petitioner, a copy of which is attached hereto and made a part hereof. The parties may offer such evidence as they may desire that is material to the question before the Board.

It Is Further Ordered that during the pendency of these proceedings existing wages, hours and conditions of employment shall not be changed by the action of either party without the consent of the other.

Given under our hands and seal at the City of Madison, Wisconsin, this 31st day of December, 1948.

Wisconsin Employment Relations Board,

By L. E. Gooding, /s/
L. E. Gooding, Chairman,
J. E. Fitzgibbon, /s/
J. E. Fitzgibbon, Commissioner,
Henry C. Rule, /s/
(Seal) Henry C. Rule, Commissioner.

42-48 **MOTION TO DISMISS BY DIVISION 998.**

(Venue and Title Omitted.)

Now comes Division 998, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, affiliated with the American Federation of Labor, by Padway, Goldberg & Previant, its attorneys, and upon all the records, pleadings and proceedings herein, and upon the affidavit attached hereto, and moves the Wisconsin Employment Relations Board as Follows:

I.

That the instant Petition of the Milwaukee Electric Railway and Transport Company be dismissed and all further proceedings herein, including the instant one, be terminated forthwith for the following reasons, and upon the following grounds:

Chapter 414, Wisconsin Laws 1947, is unconstitutional, void, and of no effect whatsoever because it is

(a) Contrary to the provisions of Article I,
43 Section 8, and Article VI of the Constitution of the United States, in that it is in conflict with the Act of Congress known as the Labor Management Relations Act of 1947, Public Law 101, 80th Congress, June 23, 1947.

(b) Contrary to the provisions of the Thirteenth Amendment to the Constitution of the United States, in that it imposes involuntary servitude upon the Union and its members and those employes represented by the Union in this lawsuit.

(c) Contrary to the Fourteenth Amendment to the Constitution of the United States in that it deprives the Union and its members and those represented by the Union of their liberty and property without due process of law, and of the equal protection of the laws, and deprives the Union and its members of the right to peacefully assemble, express themselves, and to engage in the basic civil right of collective bargaining and self-organization.

(d) Contrary to Article I, Section 10 of the Constitution of the United States, in that it impairs the obligation of contracts.

(e) Contrary to Article I, Sections 1, 2, 3, 4, 9 and 12 of the Constitution of the State of Wisconsin, in that it deprives the Union and its members of the rights therein provided for;

(f) Contrary to Article IV, Section 1, Article V, Section 1, and Article VII, Section 2 of the Constitution of the State of Wisconsin in
44 that it constitutes an unlawful delegation of legislative, executive and judicial powers.

(g) Contrary to Article VII, Section 16 of the Constitution of the State of Wisconsin, in that the Legislature has no authority to establish any tribunals of conciliation with the power to ren-

der judgment obligatory on the part of the parties unless the parties voluntarily submit their matter in difference to arbitration and agree to abide the judgment or assent thereto in writing.

(h) Contrary to Chapter 16, Wisconsin Statutes 1947, in that the parties which have been and may be appointed by the Wisconsin Employment Relations Board to act as Conciliators and Arbitrators under the provisions of Chapter 414, Wisconsin Laws 1947, have been and are so appointed without regard to and in violation of the provisions of said Chapter 16.

(i) Contrary to Article XIII, Section 9 of the Constitution of the State of Wisconsin.

II.

In the event of denial of the above motion, and only in that event, and without waiver of or prejudice to said motion, then Division 998, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, affiliated with the American Federation of Labor, moves the Board as follows:

That the instant Petition of the Milwaukee Electric Railway and Transport Company be dismissed, and all further proceedings, including the instant one, be terminated forthwith for the reason that the Milwaukee Electric Railway and Transport Company is a railroad and the employes involved herein are railroad employes, and are, therefore, exempted from the provisions

of Chapter 414, Wisconsin Laws 1947, particularly Section 111.51 (1) thereof.

III.

In the event of denial of the above motions, and each of them, and only in that event, and without waiver of or prejudice to said motions, then Division 998, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, affiliated with the American Federation of Labor, moves the Board as follows:

That the instant Petition of the Milwaukee Electric Railway and Transport Company be dismissed and all further proceedings, including the instant one, be terminated forthwith until such time as those persons who are named on the Panel of Conciliators and Arbitrators appointed by the Board submit to and successfully pass appropriate Civil Service Examinations which will demonstrate not only their qualifications and abilities to act as Conciliators and Arbitrators under such law, but also legally qualify them to receive taxpayers' money as alleged compensation for their purported services.

IV.

In the event of denial of the above motions,
46 and each of them, and only in that event, and without waiver of or prejudice to said motions, then Division 998, Amalgamated Association of Street, Electric Railway and Motor Coach Em-

ployees of America, affiliated with the American Federation of Labor, moves the Board as follows:

That the instant Petition of the Milwaukee Electric Railway and Transport Company be dismissed and all further proceedings, including the instant one, be terminated forthwith for the reason that there is "no impasse and stalemate" in "the collective bargaining process, notwithstanding good faith efforts on the part of both sides to said dispute," in that Petitioner has not bargained in good faith, and has failed and refused to consent to arbitrate in accordance with the terms of previous agreements which have been in effect between the parties, and which have always been adequate for the settlement of the differences between the parties, and have failed and refused to accept present and outstanding offers by Division 998 to so arbitrate and settle their differences.

V.

In the event of denial of the above motions, and each of them, and only in that event, and without waiver of or prejudice to said motion, then Division 998, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, affiliated with the American Federation of Labor, moves the Board as follows:

That the instant Petition of the Milwaukee Electric Railway and Transport Company be

47 dismissed and all further proceedings, including the instant one, be terminated forthwith for the reason that if there is an "impasse and stalemate" it is solely of Petitioner's creation, and, therefore, the money of the taxpayers of the State of Wisconsin should not be appropriated and spent at the request of the Petitioner and upon its Petition.

VI.

In the event of denial of the above motions, and each of them, and only in that event, and without waiver of or prejudice to said motion, then Division 998, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, affiliated with the American Federation of Labor, moves the Board as follows:

That the instant Petition of the Milwaukee Electric Railway and Transport Company be dismissed and all further proceedings, including the instant one, be terminated forthwith for the reason that since December 13, 1948, Representatives of the Federal Mediation and Conciliation Service of the United States Government have been and still are seeking to settle the instant controversy, and the appointment of a Conciliator, therefore, by the Wisconsin Employment Relations Board would not only result in a duplication of effort and confusion and conflict, but will also result in interference with the operation of Federal Laws and Agencies, contrary to the provisions of Article I, Section 8, and

Article VI of the Constitution of the United States.

Respectfully submitted,

Padway, Goldberg & Previant,
Attorneys for Division 998, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Affiliated with the American Federation of Labor.

AFFIDAVIT IN SUPPORT OF MOTION.

(Venue and title omitted.)

State of Wisconsin }
Milwaukee County } ss.

George Koechel, being first duly sworn, on oath deposes and says that he is President of Division 998, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, affiliated with the American Federation of Labor (hereinafter referred to as the Union), and he makes this affidavit on behalf of such organization and the members thereof, being first duly authorized so to do:

That Division 998, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, A. F. L., is a voluntary, unincorporated association of working men, commonly known as a labor union or labor organization situated in the City of Milwaukee,

County of Milwaukee, State of Wisconsin, and that such association has been organized for the purpose of aiding its members to become more skillful and efficient workers, the improvement of their wages, hours and conditions of labor, and the protection of their individual rights in the prosecution of their trade, and for such other objects for which working people may lawfully combine, having in view their mutual problems and interests; that substantially all of the employees of the Milwaukee Electric Railway and Transport Company (hereinafter referred to as the Company), other than executive, supervisory and office personnel, have duly designated the union as their collective bargaining representative; that as the exclusive bargaining representative of such employees the union has entered into agreements with the Company for many years last past, the last of such agreements having been cancelled and terminated by action of the Company on December 31, 1948;

That the Milwaukee Electric Railway and Transport Company is a Wisconsin corporation which provides, furnishes and sells transportation services to and for residents of the City of Milwaukee and contiguous suburbs and political subdivisions, including thousands of employees of many large industrial and commercial establishments in the City and County of Milwaukee, State of Wisconsin, most of which establishments are engaged in the production of goods for interstate commerce or in interstate commerce, and the services of which employees are essential to

such production of goods for interstate com-
51 merce; that the rolling stock equipment and material used by the company are procured in great measure by it from many and diverse points outside the State of Wisconsin, the total value of the rolling stock recently acquired by the company from such points outside the State of Wisconsin, being in excess of the amount of Two Million Dollars ($2,000,000.00); that the gross operating revenues of the company are in excess of Sixteen Million Dollars ($16,000,000.00) annually, and that it transports in excess of one million (1,000,000) passengers annually;

That the National Labor Relations Board in December, 1947, pursuant to the terms and provisions of the National Labor Relations Act, and upon the insistence of the Company that the terms of such act be complied with, assumed jurisdiction over a controversy respecting the signing of a union security agreement under the provisions of the National Labor Relations Act, conducted an election among the employees of the Company represented by the Union, and certified that the Union had successfully complied with all of the provisions of the National Labor Relations Act, and could enter into a union security agreement with the Company;

That the Company is engaged in a business affecting interstate commerce and in interstate commerce, and any interruption in its business as the result of a labor dispute with its employees would affect interstate commerce within the

meaning and provisions of the National Labor Relations Act (49 Stats. 449, U. S. Code, Title 29, Paragraph 151-166);

52 That in the year 1934 the employees of the Company represented by the Union engaged in a strike growing out of the refusal of the Company to recognize the Union as the exclusive collective bargaining representative of its employees; that upon the termination of such strike the Company and the Union agreed upon a method for the settlement of all future disputes, which method has resulted in fourteen years of uninterrupted service to the public, and which method has always been considered by both parties as adequate for the resolution of all differences which might arise between them; that such method consisted of an agreement between the parties that should any dispute arise during the term of the collective bargaining agreement or over the terms of a new collective bargaining agreement, then such dispute shall be submitted to final and binding arbitration before a tribunal created by mutual consent and choice of both parties; that the Union always has been, and still is, willing to settle the instant controversy with respect to the terms of a new collective bargaining agreement in this manner, just as a similar dispute was settled in connection with the terms and provisions of the 1948 agreement; that it was the unilateral and exclusive action of the Company which resulted in the termination of the 1948 agreement, including that part of such agreement which, if not terminated, would have

required the parties to arbitrate their differences in the manner aforesaid;

That prior to December 31, 1948, the Union submitted to the Company an offer to arbitrate the instant dispute in the following manner: Each party to appoint an arbitrator, the two such
53 arbitrators to meet daily for the purpose of agreeing upon a third member of such Arbitration Board; that in the event the arbitrators appointed by the parties should be unable after fifteen daily meetings to agree upon such third member of the Board, then the parties are to request the Federal Department of Conciliation and Mediation to submit to the parties a list of five proposed arbitrators, each party to alternately strike two names from such list, and the person whose name remains to then be the third member of such Board; that the Company has refused to accept and agree to such method and settlement of the dispute, stating that it was committed, by agreement with all other public utility employers in the State of Wisconsin, to refuse such method of arbitration;

That on Tuesday, January 4, 1949, after the members of the Union had overwhelmingly rejected by secret ballot referendum the last proposal made by the Company, the Union renewed its offer to arbitrate the dispute in the manner aforesaid, and that the company has again refused to accept such method of settlement;

That since December 13, 1948, at the request of the Union, the Milwaukee resident conciliator

of the Federal Conciliation and Mediation Service has offered his services and rendered his services in an effort to settle the instant dispute, and that such conciliator has not yet withdrawn from the case;

That affiant believes the instant controversy need not be submitted to the procedures estab-
54 lished by Chapter 414, Wisconsin Laws, 1947, if such Chapter of the Wisconsin Laws be a valid one, in view of the present efforts of the representative of the Federal Mediation and Conciliation Service, and in view of the offers made by the Union to submit the matters in dispute to an arbitration tribunal created by the parties, the expenses of which are to be borne equally by the parties; that this affidavit is made in support of the motions attached hereto and in answer to the Petition of the Milwaukee Electric Railway and Transport Company.

George Koechel.

Subscribed and sworn to before me this 4th day of January, 1949.

David Previant,
Notary Public, Milwaukee County,
Wisconsin.

My Commission expires May 7, 1950.

55 Cover.

56–83 **HEARING ON PETITION FOR APPOINTMENT OF A CONCILIATOR.**

57–62 **Preliminary Discussion and Argument.**

63 **Mr. Gooding, Chairman of the Wisconsin Employment Relations Board. made the following answers to questions put to him by Counsel for Division 998:**

None of the persons named on the Panel of Conciliators and Arbitrators appointed by the Board have qualified under Chapter 16 of the Wisconsin Statutes for their position. Neither the Director of Personnel nor the Bureau of Personnel have certified these individuals as qualified under Chapter 16 to the performance they are assigned to. Their names have not been reported by the Board to the Bureau of Personnel. They have taken the oath of office prescribed by the Constitution of the State of Wisconsin, Article IV, Section 28, and by Section 19.01 of the Statutes. The oath is on file in the Secretary of State's office. It is the same oath I took when I signed.

64–70 Motion and Affidavit appearing at Record pages 42 to 54 read into Record.

71–78 Argument on Motion.

79 Mr. Gooding: Motion No. 1 was almost wholly disposed of by a decision of the Circuit Court in the Declaratory Relief case.

Motion No. 2 was similarly disposed of.

With reference to No. 3 we are satisfied that the Civil Service Section of the Statute does not apply to these Conciliators and Arbitrators.

80 With respect to Motion No. 4 we are satisfied that there is an impasse here.

The same statement may be made with reference to Motion No. 5.

With reference to Motion No. 6 we think it is wholly immaterial whether the representatives of the Federal Mediation and Conciliation Service have been attempting to conciliate this dispute or whether anybody else has been attempting to conciliate this dispute.

82 Professor Nathan Feinsinger is designated as the Conciliator which will attempt to arrange meetings between the Company and the Union.

Mr. Previant: Without waiver of our position, we shall extend to Professor Feinsinger all the courtesies.

83 Further discussion between the parties.

84 Certificate of Official Reporter.

85-86 **ORDER APPOINTING CONCILIATOR**

(Venue and title omitted.)

The Milwaukee Electric Railway and Transport Company filed with the Wisconsin Employment Relations Board a petition pursuant to Section 111.54 of the Wis. Stats. setting forth that a labor dispute now exists between the petitioner, an employer, and the Amalgamated

Association of Street, Electric Railway and Motor Coach Employes of America, affiliated with the American Federation of Labor, and that such Association is the collective bargaining representative for the employees of the petitioner in its Operating and Maintenance Departments. The petitioner further alleged that the collective bargaining process has reached an impasse and stalemate and that the employer and employees are unable to effect a settlement of such dispute and requested the Board to appoint a conciliator pursuant to Section 111.54 of the Wis. Stats.

After notice to the parties and after hearing arguments of counsel and receiving testimony the Board has considered the petition, the testimony and arguments of counsel, and in the opinion of the Board the collective bargaining process, notwithstanding good faith efforts on the part of both sides to the dispute, has reached an impasse and stalemate and such dispute, if not settled, will cause or is likely to cause the interruption of an essential service.

86 Now, Therefore, it is

ORDERED

That Nathan W. Feinsinger, a member of the panel of conciliators and arbitrators appointed pursuant to Section 111.53 of the Wis. Stats., is hereby named and designated as conciliator and directed to attempt to effect a settlement of the dispute now existing between the parties.

It Is Further Ordered that said conciliator expeditiously meet with the parties, exert every reasonable effort to effect a prompt settlement of the dispute, and if unable to effect a settlement within fifteen days from the date of his appointment report such fact to the Board, including in his report a statement of all issues still in dispute between the parties.

Given under our hands and seal at the City of Madison, Wisconsin, this 5th day of January, 1949.

Wisconsin Employment Relations Board,

(Seal) By L. E. Gooding, /s/
L. E. Gooding, Chairman
J. E. Fitzgibbon /s/
J. E. Fitzgibbon, Commissioner
Henry C. Rule /s/
Henry C. Rule, Commissioner.

87-88

ORDER EXTENDING TIME OF CONCILIATOR.

(Venue and Title Omitted.)

Nathan P. Feinsinger having heretofore and on the 5th day of January, 1949, been appointed by the Wisconsin Employment Relations Board pursuant to Section 111.54 of the Wisconsin Statutes as Conciliator to attempt to conciliate the dispute existing between the Milwaukee Electric Railway and Transport Company and the Amalgamated

Association of Street, Electric Railway and Motor Coach Employes of America, affiliated with the American Federation of Labor, and to file a report within fifteen days from such date as to what progress had been made in the settlement of the dispute, and said Nathan P. Feinsinger having orally reported to the Board that he had been unable to effect a settlement but that the parties were still in negotiations under his direction, and that there was a possibility that if the negotiations were continued the dispute might be settled, and that such dispute is not likely to cause the interruption of an essential service at the present time, and it appearing to the Board from such report that further efforts should be made to conciliate the dispute;

Now, Therefore, it is

Ordered

88 That the time within which said Nathan P. Feinsinger as Conciliator report to the Board be, and the same hereby is extended to the 29th day of January, 1949.

It Is Further Ordered that said Nathan P. Feinsinger continue his efforts to effect settlement of the dispute now existing between such employer and its employes, and that if he is unable to effect a settlement of such dispute by the 29th of January, 1949, he report such fact to the Board, including in his statement a full statement of the issues remaining in dispute.

Given under our hands and seal at the City of Madison, Wisconsin, this 19th day of January, 1949.

Wisconsin Employment Relations Board

(Seal) By L. E. Gooding /s/
L. E. Gooding, Chairman
J. E. Fitzgibbon /s/
J. E. Fitzgibbon, Commissioner
Henry C. Rule /s/
Henry C. Rule, Commissioner

89-90 **FINAL REPORT OF CONCILIATOR.**

(Venue and title omitted.)

The undersigned was appointed as Conciliator on Wednesday, January 5, 1949, with instructions to report within 15 days. On January 19, 1949, the time was extended an additional 10 days, to January 29, 1949.

This dispute arose over the failure of the parties to agree on a new contract to succeed the previous contract which had been cancelled by the Company pursuant to proper notice, effective midnight, last December 31. On January 5, a work stoppage occurred. The Conciliator first directed his efforts towards securing a resumption of service. Service was resumed in full the following morning.

The conciliator met with the parties jointly, separately, or both, on the following days: January 6, 7, 12, 13, 19, 22, 27.

At the opening of the first conciliation meeting, the Union read a prepared statement in which it reserved certain legal objections as set forth in the proceedings before the Board on Wednesday, January 5, 1949.

The issues remaining in dispute at the opening of the conciliation sessions were as follows:

1. The amount of a general wage increase.

2. Reduction of the present 44-hour guarantee, and conversion of the reduction into an additional wage increase.

3. Holiday pay.

4. Modification or elimination of the provisions of the old contract relating to arbitration of disputes concerning the interpretation or renewal of agreements.

It will serve no useful purpose to provide further detail or recite the history of conciliation, since no doubt the Union will now revert to its original 40 demands and the Company to its original proposal.

At the final meeting (Thursday, January 27) the Conciliator proposes a formula for final settlement (a) on the merits (b) by a specified procedure. The parties were to notify the Conciliator by noon of Saturday, January 29, of their position. It was agreed that the contents of the proposal would not be disclosed unless both sides accepted. The proposal was not accepted. The Conciliator must therefore report that he has

been unable to effectuate a settlement of this dispute within the time allotted.

Respectfully submitted,

Nathan P. Feinsinger.

January 29, 1949.

91-92 **ORDER APPOINTING ARBITRATORS.**

(Venue and title omitted.)

The Wisconsin Employment Relations Board, having heretofore and on the 19th day of January, 1949, pursuant to a petition filed by the Milwaukee Electric Railway and Transport Company, a corporation, appointed Nathan P. Feinsinger of the City of Madison as conciliator, pursuant to Section 111.54 of the Wisconsin Statutes, for the purpose of attempting to settle a dispute existing between the employes of the Milwaukee Electric Railway and Transport Company, represented by the Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, A. F. L., and the petitioning company; and said Nathan P. Feinsinger having on the 31st day of January, 1949, reported to the Board that the dispute between the parties continues to exist, and from such report it appearing that a continuation of the dispute will cause, or is likely to cause, the interruption of an essential service;

Now, Therefore, it is

Ordered.

That pursuant to Section 111.55 of the Wisconsin Statutes, the following named persons, all

of whom have qualified as arbitrators under the provisions of Section 111.53 of the Wisconsin Statutes, be submitted to the parties as the per-
92 sons from which the Board of Arbitration to determine said dispute, shall be selected, to-wit: John Ernest Roe, Madison, Wisconsin, J. Martin Klotsche, Milwaukee, Wisconsin, Carl J. Ludwig, Milwaukee, Wisconsin, H. Herman Rauch, Milwaukee, Wisconsin, and Francis X. Swietlik, Milwaukee, Wisconsin.

It Is Further Ordered that the representatives of the Milwaukee Electric Railway and Transport Company and the Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, A. F. L., meet at the Milwaukee County Court House, Milwaukee, Wisconsin, on Thursday, February 3rd, 1949, at 3:00 o'clock in the afternoon, at which time each party may strike the name of one person from the list of the names above submitted. The remaining three persons will constitute the Board of Arbitration to which board will be submitted the issues in dispute between the parties.

Given under our hands and seal at the City of Madison, Wisconsin, this 31st day of January, 1949.

Wisconsin Employment Relations Board,

By L. E. Gooding, /s/
L. E. Gooding, Chairman,
J. E. Fitzgibbon, /s/
J. E. Fitzgibbon, Commissioner,
Henry C. Rule, /s/
Henry C. Rule, Commissioner.

93-99 **MOTION TO DISMISS ARBITRATION PROCEEDINGS.**

(Venue and title omitted.)

Now comes Division 998, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, affiliated with the American Federation of Labor, by Padway, Goldberg & Previant, its attorneys, and upon all the records, pleadings and proceedings herein, and upon the affidavit attached hereto, and moves the Wisconsin Employment Relations Board as follows:

I.

That the Order Appointing Arbitrators issued by the Wisconsin Employment Relations Board on January 31, 1949, be vacated and set aside and that all further proceedings herein, including the instant one, be terminated forthwith for the following reasons, and upon the following grounds:

Chapter 414, Wisconsin Laws 1947, is uncon-
94 stitutional, void, and of no effect whatsoever because it is

(a) Contrary to the provisions of Article I, Section 8, and Article VI of the Constitution of the United States, in that it is in conflict with the Act of Congress known as the Labor Management Relations Act of 1947, Public Law 101, 80th Congress, June 23, 1947.

(b) Contrary to the provisions of the Thirteenth Amendment to the Constitution of the United States, in that it imposes involuntary servitude upon the Union and its members and those employes represented by the Union in this lawsuit.

(c) Contrary to the Fourteenth Amendment to the Constitution of the United States in that it deprives the Union and its members and those represented by the Union of their liberty and property without due process of law, and of the equal protection of the laws, and deprives the Union and its members of the right to peacefully assemble, express themselves, and to engage in the basic civil right of collective bargaining and self-organization.

(d) Contrary to Article I, Section 10 of the Constitution of the United States in that it impairs the obligation of contracts.

(e) Contrary to Article I, Sections 1, 2, 3, 4, 9 and 12 of the Constitution of the State of
95 Wisconsin, in that it deprives the Union and its members of the rights therein provided for.

(f) Contrary to Article IV, Section 1, Article V, Section 1, and Article VII, Section 2, of the Constitution of the State of Wisconsin, in that it constitutes an unlawful delegation of legislative, executive and judicial powers.

(g) Contrary to Article VII, Section 16 of the Constitution of the State of Wisconsin, in that the Legislature has no authority to establish

any tribunals of conciliation with the power to render judgment obligatory on the part of the parties unless the parties voluntarily submit their matter in difference to arbitration and agree to abide the judgment or assent thereto in writing.

(h) Contrary to Chapter 16, Wisconsin Statutes, 1947, in that the parties which have been and may be appointed by the Wisconsin Employment Relations Board to act as Conciliators and Arbitrators under the provisions of Chapter 414, Wisconsin Laws, 1947, have been and are so appointed without regard to and in violation of the provisions of said Chapter 16.

(i) Contrary to Article XIII, Section 9 of the Constitution of the State of Wisconsin.

II.

In the event of denial of the above motion and only in that event, and without waiver of or
96 prejudice to said motion, then Division 998, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, affiliated with the American Federation of Labor, moves the Board as follows:

That the Order Appointing Arbitrators issued by the Wisconsin Employment Relations Board on January 31, 1949, be vacated and set aside, and that all further proceedings herein, including the instant one, be terminated forthwith for the reason that the Milwaukee Electric Railway

employes involved herein are railroad employes, and are, therefore, exempted from the provisions of Chapter 414, Wisconsin Laws, 1947, particularly Section 111.51 (1) thereof.

III.

In the event of denial of the above motions, and each of them, and only in that event, and without waiver of or prejudice to said motions, then Division 998, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, affiliated with the American Federation of Labor, moves the Board as follows:

That the Order Appointing Arbitrators issued by the Wisconsin Employment Relations Board on January 31, 1949, be vacated and set aside, and that all further proceedings herein, including the instant one, be terminated forthwith until such time as those persons who are named on the Panel of Arbitrators appointed by the
97 Board submit to and successfully pass appropriate Civil Service Examinations which will demonstrate not only their qualifications and abilities to act as Conciliators and Arbitrators under such law, but also legally qualify them to receive taxpayers' money as alleged compensation for their purported services.

IV.

In the event of denial of the above motions, and each of them, and only in that event, and

without waiver of or prejudice to said motions, then Division 998, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, affiliated with the American Federation of Labor, moves the Board as follows:

That the Order Appointing Arbitrators issued by the Wisconsin Employment Relations Board on January 31, 1949, be vacated and set aside, and that all further proceedings herein, including the instant one, be terminated forthwith for the reason that there is "no impasse and stalemate" in "the collective bargaining process, notwithstanding good faith efforts on the part of both sides to said dispute" in that the Milwaukee Electric Railway & Transport Company has not bargained in good faith, and has failed and refused to consent to arbitrate in accordance with the terms of previous agreements which have been in effect between the parties, and which have always been adequate for the settlement of the differences between the parties, and have failed and refused to accept present and outstanding offers by Division 998 to so arbitrate and settle their differences; in that the Milwaukee Electric Railway and Transport Company is using the Wisconsin Statutes, the validity of which Division 998 denies, as a shield against its duty and obligation under State and Federal Statutes to bargain collectively and in good faith.

V.

In the event of denial of the above motions, and each of them, and only in that event, and without waiver of or prejudice to said motion, then Division 998, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, affiliated with the American Federation of Labor, moves the Board as follows:

That the Order Appointing Arbitrators issued by the Wisconsin Employment Relations Board on January 31, 1949, be vacated and set aside, and that all further proceedings herein, including the instant one, be terminated forthwith for the reason that if there is an "impasse and stalemate" it is solely of the employer's creation, and, therefore, the money of the taxpayers of the State of Wisconsin should not be appropriated and spent at the request of the employer and upon its Petition.

VI.

In the event of denial of the above motions, and each of them, and only in that event, and without waiver of or prejudice to said motion, then Division 998, Amalgamated Association of
99 Street, Electric Railway and Motor Coach Employes of America, affiliated with the American Federation of Labor, moves the Board as follows:

That the Order Appointing Arbitrators issued by the Wisconsin Employment Relations Board on January 31, 1949, be vacated and set aside, and that all further proceedings herein, includ-

ing the instant one, be terminated forthwith because of the failure of the Wisconsin Employment Relations Board to conduct a hearing on the question of whether or not there is, in fact, an impasse and stalemate notwithstanding good faith efforts on the part of both sides to such dispute, and for the purpose of determining whether, in fact, if there is such an impasse and stalemate such impasse and stalemate will cause or is likely to cause the interruption of an essential service; and in this connection Division 998 denies that any or all of such conditions precedent to the Appointment of Arbitrators under the Statutes do now exist.

Respectfully submitted,

Padway, Goldberg & Previant,
Attorneys for Division 998, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, affiliated with the American Federation of Labor.

100-103 **AFFIDAVIT IN SUPPORT OF MOTION.**

(Venue and title omitted.)

State of Wisconsin }
Milwaukee County } ss.

George Koechel, being first duly sworn, on oath, deposes and says, that he is President of Division 998, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of

America, affiliated with the American Federation of Labor (hereinafter referred to as the Union), and that he makes this affidavit on behalf of such organization and the members thereof, being first duly authorized so to do;

And that this affidavit is supplementary to the affidavit previously filed in this cause on the 5th day of January, 1949;

That he repeats and reaffirms the allegations contained in such affidavit and incorporates the same herein;

That after the appointment of Nathan P. Fein-
101 singer as Conciliator herein by the Wisconsin Employment Relations Board on January 5, 1949, representatives of the Union and the Company met with such Conciliator, the Union, however, renewing its objections to the appointment of the Conciliator and to the validity of the law and meeting with such Conciliator subject to and without prejudice to such objections;

That the Company repeatedly, during the course of such conciliation, insisted upon the necessity of using the provisions of the Wisconsin Statutes relating to compulsory arbitration and stated that the only proper way of determining the dispute between the parties would be by submission of the dispute under the terms of such Statute;

That during the course of such conciliation hearings the Company refused to bargain collectively and in good faith as required by the

State and Federal Statutes and made a final offer of settlement to the Union which, in fact, resulted in a reduction of its original offer of settlement to the Union;

That during the course of and after the termination of the conciliation proceedings the Company maintained the position that the provisions of the Wisconsin Statutes relating to compulsory arbitration would automatically be invoked upon failure of the conciliation process, regardless of the conditions and circumstances then existing, and continually relied upon this misconstruction and misinterpretation of the Statute for the purpose of evading its obligations under the law to bargain collectively and in good faith;

102 That on the 19th day of January, 1949 the Wisconsin Employment Relations Board entered an Order Extending Time of Conciliator in which it found, among other things,

> "That such dispute is not likely to cause the interruption of an essential service at the present time.";

That there is now pending in the Circuit Court for Milwaukee County a lawsuit entitled

Wisconsin Employment Relations Board,
Plaintiff,

vs. Case No. 218 489.

Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Division 998, et al.,
Defendants.

in which, among other things, the Wisconsin Employment Relations Board asks for permanent injunction restraining the Union, its officers and its members

> "from calling a strike, going out on strike, or causing any work stoppage or slowdown which would cause an interruption of the public passenger service of the Milwaukee Electric Railway & Transport Company, in the State of Wisconsin, and from instigating, inducing, conspiring with or encouraging any strike, slowdown or work stoppage which would cause interruption of the public passenger service of said Company, and for such other relief as may be appropriate in the premises.";

That hearing upon such application for a permanent injunction will be had before the Circuit
163 Court of Milwaukee County on February 16, 1949; that it is the intention and purpose of the Union and its members, without waiver of and without prejudice to, its objections to the constitutionality and validity of whatever laws may be applicable, to comply with such laws until such time as they may be declared unconstitutional, void or inapplicable.

George Koechel.

Subscribed and sworn to before me this 2nd day of February, A. D. 1949.

David Previant,
Notary Public, Milwaukee County,
Wisconsin.

My commission expires May 7, A. D. 1950.

104 Cover.

105 **HEARING ON APPOINTMENT OF ARBITRATORS.**

Chairman Gooding: The purpose of this meeting is to give each party an opportunity to strike one name in the list submitted to the parties previously, and to attempt to frame the issues submitted to the Board of Arbitration when that Board meets.

Mr. Previant: We have certain preliminary motions and requests to make for the purpose of the record. We intend no reflection upon the character or integrity of either of the members of the Wisconsin Employment Relations Board or the Arbitration Panel, but are asking the following questions and making the following motions for the purpose of having adequate record upon which we may properly challenge the law which has been invoked by the Company and the Board in this case.

First we move that the record of the hearing on the appointment of the Conciliator which was held on January 5, 1949 be made a part of the record herein, including the motions then made.

Chairman: It is already part of the record.

Mr. Previant: We would like the record of this hearing to show that the motions made at that time were renewed at the first hearing with the Conciliator, and that the Union participated in the conciliation hearings without prejudice to

and without waiver of such motions and we are now renewing such motions here.

Next we move that the record herein include the order extending the time of the Conciliator, as well as the order appointing the Panel of Conciliators.

Chairman: That is part of the record.

Mr. Previant: We move that the Conciliator's report to the Board dated January 29, 1949 be made a part of the record herein.

While we appreciate that ordinarily those conciliation reports are supposed to be confidential, we make this request because it appears from the Order appointing the Panel of Arbitrators that he held that a continuation of the dispute will cause or is likely to cause the interruption of an essential service.

107 Chairman: I say for the record now that his Report doesn't refer to any interruption of the service, but his Report, in connection with everything else that has occurred herein, his Report does indicate the matter was not adjusted and that no adjustment was apparently possible, and it was on the basis of that Report, plus the matters that preceded it, that led to the appointment of this Board of Arbitration. I have assumed that these Reports, being required by the Statute, are a complete part of the record in this case.

108-111 **Discussion Concerning Method of Appointment of Panel of Arbitrators by Board.**

111 Mr. Previant: Finally, we'd like to know whether the Board's procedure permits either party to orally examine under oath the persons who are named on the Panel of Arbitrators for the purpose of determining whether any of such persons can be removed from the panel for cause and another person substituted without prejudice with our right to the one provision by the Statute?

Chairman: No, there is no such provision. I will say this, that each man here on this panel was questioned prior to his appointment or prior to being requested to serve as to whether or not he was in any way interested in the Transport Company or the Electric Company or any of its subsidiaries, or whether he was interested in any way in the Union or in any dispute between the parties, and they all advised us they were not, and had no connections with either one.

111 At this point Division 998 submitted its Motion for Dismissal together with Supporting Affidavit and read parts of it into the record.

115 Chairman: The motion will be denied.

115 Mr. Previant: At this time, then, we would like to make the following statement for the record: It is the intention of Division 998 to participate in the selection of the Board of Arbitration, and the subsequent proceedings before that Board, without waiver of or prejudice to the motions and objections already made relating to the

validity of the law under which we are proceeding, the appropriateness of invoking the law if it is valid under the circumstances of this case, and the qualifications of the members of the Board of Arbitration to act, as well as their jurisdiction to act. We are participating under the duress and coercion resulting from application of Chapter 414, Wisconsin Law 1948, which by precluding us from engaging in concerted activities for the purpose of collective bargaining or other mutual aid and protection places in jeopardy our job seniority and pension rights and the maintenance and improvement of our hours, wages and working conditions, and which affords us no other method of relief except to participate in their proceedings under protest. And at this time we want to make the motion that all of the proceedings in this case up until now become a part of the record before the Board of Arbitration so that in the event of any subsequent appeal the entire proceedings in this case, from the time of the setting of the hearing for the appointment of a Conciliator, will be before the Court.

116 (A coin was then flipped to determine which party would first strike one name from the list submitted by the Board.) Each party then struck one name from the list of five submitted to them and the Chairman of the Board announced that the Board of Arbitrators will consist of Herman Rauch, Carl Ludwig and Dr. J. Martin Klotsche.

116-120 Further discussion.

121 Certificate of Reporter.

122-123 **ORDER APPOINTING BOARD OF ARBITRATION and FIXING TIME AND PLACE OF HEARING.**

(Venue and title omitted.)

The Wisconsin Employment Relations Board having heretofore and on the 31st day of January, 1949, submitted to the parties a list of five names taken from the panel of arbitrators provided for by Section 111.53 of the Wisconsin Statutes, and representatives of the parties having met at the Court House in the City of Milwaukee, Milwaukee County, Wisconsin, on the 3rd day of February, 1949, at three o'clock in the afternoon, at which time each of the parties struck one name from the five submitted;

Now, Therefore, it is

Ordered

That the following named persons, being the three remaining after each of the parties have exercised their right of strike, shall constitute the Board of Arbitration to determine the dispute between the parties, to-wit:

Carl J. Ludwig, Milwaukee, Wisconsin;
J. Martin Klotsche, Milwaukee, Wisconsin;
H. Herman Rauch, Milwaukee, Wisconsin.

123 It Is Further Ordered that Carl J. Ludwig, one of the above named members of the Board

of Arbitration, be, and he hereby is designated to act as Chairman of said Arbitration Board.

It Is Further Ordered that said Board of Arbitration will meet at the Court House in the City of Milwaukee, Milwaukee County, Wisconsin, on the 17th day of February, 1949, at two o'clock in the afternoon, at which time the issues to be determined by the Board of Arbitration will be framed, and evidence will be received relating to such issues.

Given under our hands and seal at the City of Madison, Wisconsin, this 10th day of February, 1949.

Wisconsin Employment Relations Board,

(Seal) By L. E. Gooding /s/
L. E. Gooding, Chairman
J. E. Fitzgibbon /s/
J. E. Fitzgibbon, Commissioner
Henry C. Rule /s/
Henry C. Rule, Commissioner.

124 **TRANSCRIPT OF TESTIMONY AND RECORD**

At First Meeting of Board of Arbitration and Wisconsin Employment Relations Board With the Parties.

Chairman: Now we are proceeding a little bit differently today than we ordinarily have in these arbitrations. Ordinarily, this is the first hearing of the Board of Arbitration, but because of the fact issues have not been resolved

or determined upon, we thought it was proper to first attempt today to determine on what issues are going to be submitted to this Board of Arbitration, what questions are going to be submitted to them, and then turn the matter over to the Board of Arbitration to proceed from there on up. We had better first get the appearances on behalf of the Company and the Union. Shaw, Muskat & Paulsen, by Mr. F. H. Prosser, for the Company, and on behalf of the Union, Padway, Goldberg & Previant, by Mr. Previant.

Mr. Previant: Before any further proceedings, I want to repeat for the purposes of the record the objections and the motions which we filed at the time the Board of Arbitration was constituted and want to again repeat and re-emphasize that our participation in these proceedings is under duress of the Wisconsin Statute, and without waiver of or without prejudice to those motions and objection which have previously been filed and which are part of this record.

128 Chairman: We take the position that once the Board of Arbitration is appointed, and once the issues are framed, that from there on out it is their problem; everything that arises from there on is their problem. Now we are going to submit to them the dispute that now exists between the Company and the Union with reference to a collective bargaining agreement that is to be in effect after their determination as it is raised by the proposal of the Company and the counter-proposals of the Union or the proposals of the

Union and the counter-proposals of the Company, whichever way you want to fix it.

144 Certificate of Official Reporter.

145-146 **Order Extending Time for Board of Arbitration Award.**

147-174 **FINDINGS OF BOARD OF ARBITRATION.**

(Venue and title omitted.)

This is a proceeding under Subchapter III of Chapter 111 of the Wisconsin Statutes. This Board of Arbitration, hereinafter referred to as the Board, was appointed by order of the Wisconsin Employment Relations Board, hereinafter referred to as the State Board, which order is dated February 10, 1949. On March 7, 1949, the State Board ordered the time within which the Board hand down its findings be extended to the 11th day of April, 1949.

The State Board order of February 10, 1949, also set February 17th at 2:00 o'clock in the afternoon at the Court House in the City of Milwaukee, Wisconsin, as the date of first meeting at which time the issues were to be framed and evidence received relating to such issues.

The Board met on February 17, 1949, pursuant to said order, and the parties appeared and submitted written statements of their requests for provisions to be embodied in an agreement between them, and such requests for change

in the old contract are set forth in Union Exhibits 1 and 2 and Company Exhibit A 3. The conflicting positions stated in these exhibits have been treated by this Board as the issues in this proceeding.

No evidence was received at such hearing on February 17, 1949, and the hearing was adjourned to March 1, 1949, over the objection of the Union. Hearings were held on March 11th and thereafter, terminating March 29th without objection of either party to the time convening or adjourning of any such hearing, and both parties were represented and participated at all of said hearings.

Having considered and reviewed all the evidence, including the exhibits, and having considered all of the criteria required to be considered under the statute as well as other considerations urged upon the Board by the parties as being normally and traditionally taken into account in the determination of wages, hours and working conditions through voluntary collective bargaining or arbitration between the parties, the Board makes the following findings, decision and order.

FINDINGS OF FACT.

1. The Milwaukee Electric Railway and Transport Company, hereinafter referred to as "the company" or "the Transport Company", is a public utility which, since its organization in 1938, has owned and operated all except a few

of the streetcar, trolley and motor bus public transportation facilities in the City of Milwaukee. It has a total of approximately 3,100 employees. Of this number about 2,700 are in the collective bargaining unit represented by the
148 Union (Division 998) here involved. "Operators" (streetcar, trolley bus, or motor bus) constitute about 69% (1,850) of the unit. They are the "key" group in the unit.

2. The Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Division 998, hereinafter referred to as "the Union" is the duly accredited representative for collective bargaining purposes of the company's operating and maintenance employees whose occupations are listed in the wage schedules included as Exhibit "A" attached to the General Labor Agreement between the parties which was executed June 11, 1948, and hereinafter referred to as the old contract.

The Union has had unbroken contractual relations with the owners of the property here involved since November, 1934, and with the present owner, the Transport Company, since it has been operating the property.

3. The old contract was signed June 11, 1948, and was effective from July 1, 1948, to December 31, 1948, "and thereafter from year to year unless terminated as herein provided . . ." If provided: "Each party retains the unqualified right to terminate this agreement as of December 31, 1948, or on any subsequent anniversary

thereof, by delivering to the other party a written notice of termination not less than sixty (60) days prior to December 31, ..." (Article XII, Section 21).

Article XII, Section 22, provided as follows:

> "If either party desires to negotiate any changes or modifications in Exhibit 'A', attached hereto, to become effective on January 1, 1949, or any subsequent anniversary date, it shall notify the other party in writing of the desire to enter into negotiations for that purpose, describing specifically all of the changes desired, not less than sixty (60) days prior to the end of said initial term or any annual extension thereof. In the event that the parties cannot reach an agreement on the proposed changes and notice of cancellation of this contract has not been given, as provided in Paragraph 21 of Article XII, then such proposed changes may be submitted to arbitration, subject to the provisions of Articles IV and V of this agreement."

On October 27, 1948, the union submitted to the company written proposals for certain specified changes in the old contract and requested a conference. On October 29, 1948, the company delivered to the union a written notice acknowledging receipt of the union's letter of October 27th and stating that pursuant to Article XII of the General Labor Agreement dated June 11, 1948, "the company hereby terminates and cancels said agreement as of December 31, 1948."

The notice further states a willingness to commence negotiations as early as convenient for the purpose of reaching an agreement for the calendar year 1949. The notice was accompanied by proposals for a new contract and observations relative to these proposals. The proposals submitted did not constitute a complete contract, but included specific proposals and a general suggestion that Exhibit "A" of the old contract be retained except for the changes proposed.

Negotiations during November and December, 1948, resulted in no agreement. During these negotiations the union proposed arbitration under the terms of the old contract, but with this modification: that if the parties failed to agree, a third arbitrator be chosen from a panel of five to be submitted to the parties by the Federal Mediation and Conciliation Board, each party to strike two names from the panel and the remaining member to become the chairman of the arbitration board. This offer was rejected by the company, and negotiations thereafter broke down.

149 We find that the Company's notice of termination operated to terminate the June, 1948, General Labor Agreement on December 31, 1948, and we further find that the arbitration proposal of the union just referred to was not in substance a proposal for arbitration under the terms of the contract.

Though the contract terminated on December 31, 1948, the terms and conditions of the contract

have continued to govern the relations between the parties.

4. During these proceedings the Union did not withdraw any of its proposals or consent to any of the Company's proposals. It did state that no evidence would be introduced in support of certain of its own proposals.

The Company, at the hearing, specifically withdrew its objection to some of the Union proposals, and withdrew its objection to some other Union proposals subject to qualifications. The qualifications relating to agreement upon a five-day week were called "conditions." Those Union proposals, which were accepted in toto by the Company, eliminate some areas of dispute, and those given a qualified acceptance narrow the area of dispute.

5. The old contract contained two basic sections; the first, entitled "General Labor Agreement," provided for matters like "recognition," the "grievance procedure," etc. The signatures of the parties follow this portion. The second part, entitled "Exhibit A," dealt with "Wages, Hours and Working Conditions," and was, by reference, incorporated into the first (the signed) portion.

The Company's revised "conditional" proposals submitted at the hearing were confined to the "Exhibit A" matter of the old contract. It made no changes in its original proposals to amend the first general section. The Union's pro-

posals affected only the terms in the "Exhibit A" section of the old contract.

The Company's proposals for changes in the old contract involve changes ranging from strictly language differences to basic changes. They also involve shifting, renumbering and retitling many of the old provisions. The **comparison**, therefore, must be made by **subject matter covered rather than by title or number.**

6. In the initial paragraph which identifies the parties the Company requests certain word changes and deletions. One request is designed to change the application of the agreement. It involves the deletion of the words, "its successors and assigns." The effect of the deletion is to confine the application of the terms of the agreement to the Company and cease to make it apply to any possible successor such as a new owner taking over a portion or all of the property. This proposed deletion is related to a later proposed new provision with similar objectives and found in Article V, Section 2, of the proposal.

No convincing need for this change has been demonstrated. The provision in question has caused no difficulty, and any future successor of the Company not only has the right of termination provided by contract, but such protection as is provided by law to the Transport Company. The request is, therefore, denied.

7. The Company proposes changes in the Statement of Objectives (Article I). **Section 2** of the

old contract is, in effect, a "no strike" provision. The Company proposes both language and substantive changes and additions.

(a) The recognition of the obligation to perform essential public service "without unnecessary interruption" is by the two parties (the Company **and the Union)** rather than, as in the old contract, "the company and its employees."

150 (b) It adds a new provision permitting the "Discharge" by the Company of any employee who fails to abide by the service continuation commitment.

(c) The Company is made liable for indemnification for all wage losses suffered by its employees if it should engage in a "lockout"—the latter being expressly prohibited.

These proposed changes are substantial. No evidence was introduced in their support, and the requested changes are, therefore, denied.

8. The Company's proposed Article II is entitled "Union and Employee Security" clause. In the old contract it is entitled "Recognition" and includes the "all Union" provision. The Company's proposal collects a series of provisions from various sections of the old contract. It proposes changes ranging from word or language changes to basic modifications and additions.

(a) It proposes that all employees (within the Unit) become members of the union

"within sixty days." The old contract provided that they "shall be members . . ."

(b) It proposes to define "good standing" with the Union by making the sole test the tendering of "such initiation fees and periodic dues as are uniformly required of all other similarly classified members of the association."

(c) It proposes a commitment by the Union and its membership not to "discriminate against any employee" and not to "arbitrarily or capriciously suspend or expel any member from the association."

(d) It proposes a provision, in the nature of a clarification or an old provision, that "Disciplinary Suspensions and Discharges shall be subject to grievance and arbitration . . ."

While there is much in this proposal which seems unobjectionable and in the interests of clarity, there is also no proof of need of the suggested changes. Changes in phraseology to clarify meaning are always desirable, but such changes should be brought about by negotiation rather than arbitration. Language, however awkward, often acquires by usage a clarity of meaning which should not be lightly discarded, and new language sometimes creates more problems than it eliminates. The parties become accustomed to old language and may be confused by changes. Then, too, changes made by well inten-

tioned revisors solely for purposes of clarification may later appear substantial to parties confronted with specific problems.

As to the substantial changes incorporated in these proposals, no evidence of need has been oeffred. For the reasons above stated, the Company's Article II is denied.

9. The Company's proposed Article III entitled "Collective Bargaining" incorporates the "Recognition" and the "Negotiation and Grievance Procedure" provisions. It makes additions to the terms of the old contract by:

(a) Circumscribing the jurisdiction of arbitrators.

(b) Placing a ten-day limitation on the presentation by either party of grievances which may arise. (Old provision limited the company to seventy-two hours; no limit on employee.)

(c) It defines "employee."

151 The proposal to safeguard the provisions of the contract from change by arbitration during its initial term was not supported by the introduction of evidence, and the request for it is denied.

The proposal for a limitation on grievances by either party appears in principle to have merit. The lack of such a rule has not been shown to have caused any serious difficulty in the past; the request, therefore, is denied.

The proposal to define the term "employee" more sharply is denied for the reason given for the denial of the Company's proposed Article II.

10. The Company's proposed Article IV relates to "Arbitration". It is a complete substitute for the old provision. It differs basically from the old contract in the following respects:

(a) It eliminates the "dead end" features of the old contract by referring the appointment of the third member of the Arbitration Board to the Wisconsin Employment Relations Board in case the two appointees of the the parties cannot agree on the third member.

(b) It limits arbitration to matters of interpretation and enforcement of the contract.

(c) It proposes that matters related to extension or modification of the contract be referred to arbitration under the "Utilities Law".

(d) It clarifies the provisions of the old contract which make "disciplinary actions" subject to the Grievance procedure.

The arbitration clause of the old contract has caused the parties no trouble. The difficulty which caused the old contract to terminate without renewal cannot be blamed on the arbitration clause because neither party proposed arbitration in accordance with that clause. The "dead end" clause was not to blame because the dispute never reached the "dead end".

The naming of a third arbitrator or specification of a method of choosing such an arbitrator is a matter of such importance that this Board will not force upon the parties something they have never been able to agree upon themselves in the absence of urgent need, and no such need has been demonstrated. Even though the "dead end" might be reached at some time in the future, it would be no "dead end" in fact because a utility law arbitration would resolve the deadlock.

Should this law be held invalid by the courts, the order of this statutory board would also become inoperative, and if the law should be modified or repealed, which cannot happen for at least two years, any order of this board will have run its statutory time limit of one year.

For these reasons and for the general reason given with reference to the Company's proposed Article II, the Company's proposed Article IV is denied.

11. The Company's proposed Article V would be entitled "Management" and would become the "Management" clause.

It combines, with minor changes, the old provisions dealing with management prerogative matters.

For the reasons given for the denial of the Company's proposed Article II, the Company's proposed Article V is denied.

152 12. The Company's proposed Article VI is a new provision stating that "nothing in the con-

tract . . . shall be construed as guarantee of daily, weekly, monthly or annual work or pay."

The company seeks here a rule of strict construction similar to rules applied by the courts with reference to penalties. Whether such a rule is appropriate cannot be intelligently determined without a careful examination of every provision of the entire contract with reference to every hypothetical case which might arise under each affected clause. We are unprepared to assume this responsibility and feel that in the absence of evidence of need for this clause, it should not be added by this board. The request is, therefore, denied.

13. The Company's proposed Article VII deals with the duration of the contract in language differing from that in the old Article VII. It also deals with notice of modification or termination, or possible arbitration of dispute on the terms of a new agreement. It proposes that the latter type of arbitration be conducted under the provisions of the Utility Law.

The Company also proposed deletion of the old provision requiring the Company to bring charges against an employee "within seventy-two hours after notice of the alleged offense". The Company proposed the substitution of the clause in Article III providing that both the Company and the Union shall file grievance within ten days.

The Company's proposed Section 1 of Article VII is denied for the reasons previously given

for the denial of the requested Article II and Article IV.

The Company's proposal to eliminate Paragraph 13 of the old contract relative to a seventy-hour limitation for Company charges against an employee is denied for the reasons previously stated for the denial of the requested Article III.

EXHIBIT "A".

Wages, Hours and Working Conditions.

(Old language):

"The following rules and regulations apply to employees for whom the association is collective bargaining agent and are part of the general agreement . . ."

14. **Article XIII, Section C, Sub-Section 12** (Transportation Department) Relates to "Off Days."

The old clause provided that **Trainmen and Bus drivers holding regular runs**

(a) "shall be allowed 3 days off every 2 weeks."

(b) that "Sundays off shall be equally distributed."

Section D, Sub-Section 38—Relates to overtime pay for **all Transportation operators.**

The old clause provided:

(a) time and one-half for "paid for time" in excess of 8 hours per day or 40 hours per

week (exclusive of allowances for sick leave, vacations or Holiday Premium pay).

153 (b) no pyramiding ("duplication") of time and one-half.

Section D, Sub-Section 13.

The old clause required all operators to take off at least the number of days scheduled.

In respect to these cited provisions the **Union** proposes the following changes:

(a) That trainmen and bus operators holding regular runs be given 2 "off days" per week.

(b) That the "off day" schedule be "negotiated" by the parties.

(c) That the time and one-half provided in the old agreement (Article XIII, Section D 40) for all "off day work" should be paid "separate and apart from any other daily or weekly overtime payments."

(d) That the "no pyramiding of overtime" provision be deleted from the old clause.

The **Company** in its original proposal made provision for overtime after 8 hours per day only. It deleted the old provision for weekly overtime (after 40 hours).

In its revised proposal presented during the course of the hearing, it withdrew its objection to:

(a) "2 off days per week".

(b) to overtime after 40 hours per week.

Under the old agreement the trainmen and bus operators who held regular runs were guaranteed 44 pay hours per week. This guarantee included 4 hours at the overtime rate. Neither party proposed to continue the overtime guarantee.

The record shows that the normal work schedule proposed by the Union is in effect in a substantial majority of industries with labor agreements. It also shows that many transit companies are subject to such provisions. The railway industry recently established the 5-day week with time and one-half for "off day" work.

There is no evidence that there is a practice or a tendency in the transit industry to pay for "off day" work at the rate of the time and one-half "separate and apart from any daily or weekly overtime." Nor is there any evidence that other enterprises or businesses which require week-around operation tend to make such payments.

There is a conflict between the Union's proposal to pay time and one-half for "off day" work and the old provision (Article XIII, Section C, Sub-Section 13) providing the requirement to "take off" the scheduled off days.

In its revised proposal, the Company urged that it be granted some time to effect the change over to the 5-day week. It suggested mid-September as a possible date.

The Company has a duty to provide adequate transportation service. If the "2 off days per

week" requirement were placed in effect immediately, the fulfillment of this obligation might (on account of insufficient personnel) be difficult, if not impossible. It is the Board's opinion therefore, that the provisions of Article XIII, Section C, Sub-Section 13 of the old agreement should be suspended until September 15, 1949.

154 The **Union** proposes that "off day" schedules should be "negotiated" by the parties. Its object is to provide, as far as possible, successive and desirable days off. The Company proposed to "discuss" such schedules to achieve that result and to avoid an impasse.

It is the opinion of the Board that:

(a) Two "off days" per week should be established.

(b) "Off Day" schedules should be discussed with the Union before they are put into effect and should be subject to the grievance procedure.

(c) Overtime should be payable after 8 hours per day or 40 hours per week without pyramiding such overtime (old provision).

(d) The requirement that "off days" be taken should be suspended until September 15, 1949.

15. **Article XIII, Section C, Subsection 14.**

The issue here involved is related to "**Spread and Run Limitations.**"

The **Union** proposes that:

(a) **60%** (old—50%) of all runs must be completed within 9 hours (old—9½) hours.

(b) Not over 12% (same as old) of the total runs shall exceed **10½** (old—12½) hours; no run shall exceed **12** (old—13½) hours.

(c) (New Provision) "Regular scheduled Saturday and Sunday runs shall not finish later than the week day run to which they are attached."

(d) (Modification of old Article XIII, Section C, Subsection 15)—"One piece runs shall not be less than 60% (old—50% in summer, 45% in winter) of the total regular runs **"at any one station"** (old—applied over all) and **"these runs shall be equally distributed between day and night runs** (new)."

Section C, Subsection 15.

The old provision as modified is attached to Subsection 14 above, and a new paragraph is proposed by the Union:

"All Sunday runs shall be one piece runs."

At present:

(a) Approximately 54% of all runs are completed in 9½ hours. The Milwaukee practice is above that prevailing in the transit industry generally.

(b) A fraction less than 7% exceed 12½ hours; 42+% exceed 10½ hours and 20+%

exceed 12 hours. Milwaukee is above average when compared with key midwest and the larger Amalgamated properties. The maximum spread currently in effect in Milwaukee is 13 hours 5 minutes.

A provision of 13 hours for maximum spread is reasonable and would put Milwaukee above the average of transit companies, but not out of line with the well-established practice in the industry.

(c) About 50% of weekday runs finish later on Saturday and Sunday; a little more than one-third of the Saturday and Sunday runs finish from 1 to 15 minutes later than on week days; on Saturdays runs finish an average of 37 minutes later, on Sundays 43 minutes later than on week days.

155 Transportation needs on Saturday and Sunday are substantially different from week days (as to time when needed). There is no evidence that the Company has been unreasonable in cutting the week-end runs.

(d) At present 52% of all runs are "one piece" runs; this percentage varies from 54% to 46% at the different stations. No station has 60%. To equalize the day and night "one piece" runs would eliminate about 20% of the regular runs, and necessitate returning to the "extra list" men who are now on regular runs. There was no showing that the equalization of day and night one piece runs would be practical, all things considered.

The request for all straight runs on Sunday would require the creation of "trippers" in lieu of present regular split runs to provide the required service.

It is the opinion of the Board:

(a) That **55%** of all runs should be completed within 9½ hours.

(b) That no runs should exceed **13** hours.

(c) That the request regarding Saturday and Sunday runs should be denied.

(d) That the request for equal distribution between day and night runs be denied; that the request relative to equal distribution of one piece runs between stations shall be denied except that "such runs shall be distributed as equally as practicable between the various stations."

(e) (Article XIII, Section C, Subdivision 15)—That the request for all one piece runs on Sunday be denied.

156 16. **Article XIII, Section C, Sub-Section 18** (Transportation Department).

The old clause provided that "Trainmen and Busmen who work on the night extra list shall not be required to work morning trippers."

The **Company** proposes that the prohibition be deleted and that an intervening period of 8 hours be required.

The old provision was negotiated and agreed upon by the parties. It allowed a normal rest

period between the end of one day's work and the beginning of the next. The adoption of the Company's proposal would make more extra men available for "trippers" during the morning peak load.

It is the opinion of the Board that the adoption of the Company's proposal would put an unreasonable burden on the health, comfort and convenience of the night extra operators, and therefore should be denied.

17. **Article XIII, Section C, Sub-Section 20** (Transportation Department).

The old agreement provided that "all trainmen and bus men shall be guaranteed at least the **number of hours** in their run . . ." while rendering certain named services.

The **Union** proposes to amend the old provision by **including "spread time"** premium in the guarantee.

The effect of the Union's proposal is to assure the employee no less "take home" pay than he would have earned on his regular run.

It is the opinion of the Board that the Union's request is reasonable, and therefore should be granted.

18. **Article XIII, Section C, Sub-Section 22** (Transportation Department).

In the old clause this paragraph establishes specified "time allowances" for named purposes.

The **Union** proposes to make the following changes:

(a) Wisconsin Motor Bus city operators —**10** minutes (old—5 minutes per day).

(b) Conductors and operators who sell passes—**60** minutes per week (old—30 minutes).

(c) (new) Allow up to 90 minutes to trainmen and operators for time lost in picking runs.

(d) (new) Allow **2** minutes to collect receipts at Plankinton and Packard Avenues, northbound, on Route #66.

The **Company** proposed to delete the requirement which makes the old 30-minute pass turn-in time subject to time and one-half.

There is no showing that the money counting and turn-in time here in question is, on the average, inadequate to compensate the employees for the time consumed. The payment goes to all the named persons irrespective of the amount of money actually handled. Studies made by the Company indicated that the majority of the persons involved had completed their "check in" and went "off duty" not later than the time for
157 which they were paid. This evidence, though limited, is uncontested. The record also shows that while the pass price has increased, the sale of passes has decreased proportionately so that the total amount of money taken in has not materially changed.

The provision that time and one-half can apply on the "pass turn-in" time was negotiated and agreed upon by the parties. There is no evidence that the circumstanees regarding the situation which impelled the action have been materially changed or that experience warrants the deletion.

The "2 minute" time allowance at Packard and Plankinton Avennes is not a "money allowance" as such. It is a request, in effect, that the Company be compelled to so schedule the run (#66) that the northbound run will have a 2-minute time stop at that point.

The record shows that no such allowance is needed for the fare collection work required. To the extent that any operator may feel that the schedule on that line is "too tight", considering the work requirements, he always has the right to such relief through the grievance procedure of the contract. There is no evidence that this means was ever seriously tried to solve the instant issue and that relief was denied.

It is the opinion of the Board that all the cited proposals advanced in relation to this issue be denied.

19. **Article XIII, Section D, Sub-Section 39** (Transportation Department).

The provision in the old agreement provided for the payment of time and one-half to operators for "paid for time in excess of 11½ con-

secutive hours separate and apart from any other daily or weekly overtime."

The **Union** proposed:

(a) To amend this provision by substituting "**11**" for the present 11½.

(b) To delete the word "assigned" from the last sentence which reads: "Such premium (to men working extra parts) to be paid on time worked after .. hours spread which begins with the first paid for time **assigned** in the day."

The **Company's** revised proposal withdrew its original proposal to modify the old clause by substituting the word "premium" for the old words "daily or weekly overtime".

The record shows, in respect to the Union's proposal to pay "spread premium" **after 11 hours**, that some other transit companies among the midwest key properties and the larger Amalgamated group now have that provision; about an equal number of companies have a more liberal provision and the largest majority of companies have less liberal requirements. At present 32% of the runs exceed 11½ hours; 38% exceed 11 hours.

The Union requested to delete the word "assigned" from the language of the old agreement. No substantial need for the deletion was shown. While it is suggested as merely a clarifying proposal, there is not enough evidence in the record to establish that it would not produce a substantive change in the provision.

It is the opinion of the Board that the Union's proposals should be denied.

158 20. **Article XIII, Section E, Sub-Section 42.**

The old clause required the Company "to furnish the association with .... copies of work assignment sheets, headway sheets and individual run schedules."

The **Union** proposes to add the language: "at least 7 days prior to picking."

The evidence does not indicate whether the designated period of time is either feasible or necessary. The purpose for the request is to allow adequate time for reviewing the new run schedules before "picking" time.

It is the opinion of the Board that the phrase "a reasonable time" should be substituted for the Union's proposed "at least 7 days."

21. **Article XIII, Section G, Sub-Section 59** (Station Clerks and Supply Car Clerks).

The old provision dealt with the monthly rates payable to "Station Clerks and Supply Car Clerks" and "Bulletin Clerks"; established that the monthly rates were based on 51 hours per week at straight time; provided that **overtime** at the half time rate was payable over 40 hours and up to 51 hours per week and that time and one-half was payable after 51 hours. It provided for a 2¢ per hour night shift differential for Station Clerks and provided that "**clerks shall be required to take at least one day off**

per week." It provided the pay rate for "part time clerks" and incorporated Seniority rights by reference.

The **Company** originally proposed that the overtime rate of time and one-half apply after 8 hours per day only. Its revised proposal provides:

(a) That such overtime rate apply "after 8 hours per day or 40 hours per week" (without pyramiding).

(b) That "3 days off in each 2 weeks" be allowed.

The **Union** made no proposal to change the old provisions.

The **Company's** revised proposal places the clerks in common with other employees on an 8-hour day and 40-hour week. The normal 2 days off per week which are companions to such a schedule would be effected gradually under the 3 days off in 2 weeks proposal—a step in that direction from the one off day per week requirement in the old contract.

It is the opinion of the Board that all the old provisions, other than those dealing with the wage rates, should be amended as proposed by the Company.

22. **Article XIV, Section A, Sub-Section 60** (Way and Structures Department Employees).

The old clause provided for "time and one-half" after 8 hours per day and for **off day** work except when performed in exchange with another

employee. (Sub-Section 80 provided a 40-hour per week, Monday through Friday working schedule.)

The **Company's** original proposal deleted the old provisions relative to "off day" work exchange. Its revised proposal withdrew its request for the deletion.

The **Union** proposed no change in this provision. No need for change has been shown.

It is the opinion of the Board that the terms of the clause in the old agreement should be continued.

159 23. **Article XIV, Section A, Sub-Section 66** (Way and Structures Department).

The old provision required "a minimum of 3 hours pay" to "outside workers" who report for work but cannot work on account of inclement weather. It also provided a similar guarantee in case they were called back to work on such a day after having been dismissed.

The **Union** proposes that the guarantee be increased to **5 hours** in each case.

A large number of the Amalgamated companies (in cities over half million population) and of the midwest companies have no such guarantee. Many of them have the same provision or guarantee less hours. A few have better provisions.

It is the opinion of the Board that the Union's request should be denied.

24. **Article XIV, Section A, Sub-Section 70** (Way and Structures Department).

The old clause provides a **25¢ per hour premium** payment to employees "who work on freshly creosoted ties."

The **Union** proposed to amend this provision by providing that work on "ties or blocks soaked with oil or naphtha solution" be included in this provision.

During the hearing the Company withdrew its objection to the Union's proposal.

It is the opinion of the Board that the old provision should be amended as proposed by the Union.

25. **Article XIV, Section A, Sub-Section 71.**

The old clause provided that "trackmen doing **paving** work" should be paid a premium of 5¢ per hour while doing such work; the same premium was prescribed for "trackmen and laborers operating concrete breakers and jack hammers."

The **Union** proposed that the word "Men" be substituted for the words "Trackmen and Laborers."

At the time of the hearing the Company withdrew its objection to the Union's proposal.

It is the opinion of the Board that the amendment to the old clause proposed by the Union should be granted.

26. **Article XIV,** (new) **Section A, Sub-Section 71 (a)** (Way and Structures Department).

The **Union** proposes that a 10¢ per hour premium should be paid to operators of F. W. D. trucks and "Sand Hopper" trucks (#40).

The evidence shows that the F. W. D. trucks are used for cutting ice, grading dirt, or hauling materials. The Hopper truck is used for hauling and distributing sand to the various places where it is needed. It shows that when the F. W. D. trucks are operated for ice cutting or dirt grading purposes, the work requires more than usual concentration and carefulness. It does not show that when the F. W. D. trucks are driven merely for the purpose of general hauling that the work requires unusual skill or effort.

160 It is the opinion of the Board that the Union's request for a 10¢ premium while driving the Four Wheel Drive trucks and the Sand Hopper trucks should be granted, to the extent of providing such a premium while doing ice cutting and grading work.

27. **Article XIV, Section B, Sub-Section 75** (Way and Structures Department).

The old clause provides, among other things, that . . . "the employee with the longest service in the occupational group shall be given preference on jobs in that group **if he is not needed on other work** and is qualified."

The **Union** proposes to delete the emphasized portion of the old clause.

The record does not produce persuasive evidence that the desired change is necessary. The Union has never seriously pursued, as a grievance, a case of alleged discrimination under that provision so as to determine the meaning and application of the language here in question. The elimination of that language might produce results which go far beyond the expressed object of the deletion.

It is the judgment of the Board that the Union's proposal for amendment should be denied.

28. (a) **Article XIV, Section C, Sub-Section 85** (Way and Structures Department).

(b) **Article XVI, Section C, Sub-Section 138** (Traffic Department).

The old provisions require:

(a) A safe and healthful place of work.

(b) Equipment and machinery in good **and safe** working condition.

(c) Union members "use all safeguards furnished **or required** by the Company . . ."

The **Union** proposes the deletion of the emphasized portions of the old agreement.

There is a similar provision under old Article XV, "Rolling Stock Department," Section C, Sub-Section 129, which conforms with the Union's request and which is sought to be reproduced here. No safety equipment purchased by the em-

ployee is now required. They are encouraged to purchase and wear safety shoes.

It is the opinion of the Board that the Union's request should be granted.

29. **Article XIV, Section D, Sub-Section 92** (Way and Structures Department).

The old clause (in addition to the wage rates which will not be considered here) contained:

(a) A **"note"** explaining that the monthly rates given for "yard foremen and section foremen" are the straight time rates for a 44-hour work week.

(b) Provided, for the above named class of employees, half time overtime rate over 40 hours; time and one-half after 44 hours.

(c) It prescribed the formula for converting the monthly rates into hourly rates.

161 The **Company** in its original proposal requested deletion of the provisions following "(a)" above. The deletion of the special overtime provision applicable exclusively to yard foremen and section foremen had the effect of making the old general provision, **Article XIV, Section A, Sub-Section 60** (Way and Structures Department), apply. It provided for overtime after 8 hours per day and for overtime for "off day" work unless performed for the accommodation of a fellow employee. It also had the effect of making old **Article XIV, Section C, Sub-Section 80** (Way and Structures Department) apply. That general paragraph provided that the "working sched-

ule" for "Way and Structures Department" employees shall be "40 hours per week . . . Monday through Friday." Thus the Company was, in effect, proposing an 8-hour day and 40-hour week with time and one-half for overtime and for Saturday and Sunday work, without duplicating overtime.

In its **revised proposal** the Company deleted the monthly rates, proposed only the hourly rates, and deleted the old clause's "note" explained above.

The **Union** proposed that the "Section Foremen" be granted the old third year increase at the beginning of the second year. The Company agreed.

The object of the parties is to establish an 8-hour day and a 40-hour week with time and one-half for overtime in those departments where longer hours or lesser overtime rates now prevail. The deletion of everything in the "note" provisions will effect that objective.

It is the judgment of the Board that, except for the wage rates, and the "note" paragraph, the terms of the old clause should be retained.

30. **Article XIV, Section C, Sub-Section 100** (Ways and Structures Department).

The old clause applicable to **Watchmen** provides for:

(a) Time and one-half after 8 hours per day or 44 hours per week.

(b) Time and one-half for "off day" work, except when such work is an exchange to accommodate a fellow employee.

The **Union** proposed to provide that time and one-half should be **unconditional** and be paid "separate and apart from any other daily or weekly overtime."

The **Company** originally proposed time and one-half **after 8 hours per day** and for work on regular day off. Its revised proposal merely changes the "44" hours to "40 hours" (for weekly overtime) and retains the balance of the language.

There is no showing on the record that it is customary either in the transit industry or in other industries to pay watchmen time and one-half for "off day" work, "separate and apart from any other daily or weekly overtime," which, in effect, produces "double time" for the 6th and 7th day worked.

It is the opinion of the Board that the old provision, so amended as to pay weekly overtime after 40 hours, should be incorporated into the new agreement.

31. **Article XV, Section A, Sub-Section 101** (Rolling Stock Department).

The old clause provided for: time and one-half **after regular scheduled hours** in any one day and for work on the "regular day off," except where such work is an exchange to accommodate another employee.

The "working schedule" is:

162 (a) **Cold Springs Shop**—8 hours per day, 40 hours per week, Monday through Friday (paragraph 118).

(b) **Cold Spring Boiler Plant**—6 hours per day, 42 hours per week (paragraph 119).

(c) **Carhouse and Garage**—8 hours per day and 40 hours per week. Shall be scheduled to work "8 hours per day" (paragraph 120).

The **Union** proposes to amend the overtime provision relating to "off day" pay. It proposes to add that such overtime shall be paid "separate and apart from any other daily or weekly overtime payments."

The **Company's** original proposal was to pay time and one-half after 8 hours per day and for scheduled "off day" work. Its revised proposal withdrew its original demands.

There is no substantial evidence in the record that the Union's proposal compensating for "off day" work at the rate of time and one-half "separate and apart from any other daily or weekly overtime payments" is being applied to any extent in employments and enterprises comparable to that here involved.

It is the opinion of the Board that the Union's request should be denied.

32. **Article XV, Section A, Sub-Section 110** (Rolling Stock Department).

The old clause provides, in effect, that when an employee temporarily works in a classification higher than his own, he will receive either his regular rate or the higher rate for the entire day, depending upon which type of work occupied the majority of his time.

The **Union** proposes that when any employee performs a higher classification of work for "more than one hour on any one day" he shall receive the higher rate for the entire day.

The record shows that employees generally spend substantially more time on classifications of work below their own than they do in higher. When compared with comparable transit companies, the provision of the old agreement is at least as good as the average. The record does not show that the Company took undue advantage of the employees under the old provision.

It is the opinion of the Arbitration Board that the Union's request should be denied.

33. **Article XV, Section C, Sub-Section 119** (Rolling Stock Department).

Originally no proposal for change by either party.

Company's revised (conditional) proposal would amend the old clause so as to pay the Cold Spring Boiler Plant employees time and one-half after 6 hours per day or 40 hours per week (old —over 6 hours per day or 42 hours per week).

The Company's revised proposal has the effect of paying weekly overtime to the Boiler Plant employees after 40 hours per week. The Union made no proposal for change.

In view of the fact that the 40-hour week is being put into general effect on the property, it should also apply to these employees.

It is the opinion of the Board that overtime should be payable to the employees here in question after 6 hours per day or 40 hours per week.

163 34. **Article XV, Section C, Sub-Section 120** (Rolling Stock Department).

The old clause provided that "Carhouse and Garage" employees be paid overtime (time and one-half) for work in excess of 8 hours per day or 40 hours per week and that they "be scheduled to work 8 hours per day."

The **Union** proposed the following additional provisions:

(a) Those employees should be required to take their regular scheduled days off.

(b) Time and one-half shall be paid for all work performed on Saturdays, Sundays and Holidays.

The **Company's** original proposal was to delete the entire paragraph. Its revised proposal withdrew the proposal to delete.

The Union presented no conclusive evidence on the first proposal noted. There is no evidence that in the transit industry or in comparable

employments where week-around operation is indispensable and traditional, that the overtime, as such, for Saturdays, Sundays or Holidays is paid in any substantial degree.

It is the opinion of the Board that the Union's requests on this issue should be denied.

35. **Article XV, Section C, Sub-Section 123.5.**

The **Union** proposed the following **new provisions:**

(a) That "clerks and foremen" should be eliminated from the "Company work sheets."

(b) That employees with "specialists" classification should be assigned to "all shifts" in the "Carhouses and Garages."

The record shows that these issues involve the question of who should work and what classification of workers are needed at any given time.

It is the opinion of the Board that Section 111.58 of the Wisconsin Statutes, which provides that the Board shall make no award which would infringe upon the rights of the employers to manage his business, precludes a determination of these issues by this Board.

36. **Article XV, Section D, Sub-Section 133** (Rolling Stock Department).

The old clause provides the wage schedule applicable to the Rolling Stock Department. The old schedule classifies "clerks" and "storekeepers" with "utility men" with the (top) rate of

$1.32 per hour. Repairmen "B" are rated $1.38 per hour (top).

The **Union** proposes that the "clerks" and "storekeepers" be reclassified to the Repairmen "B" class.

The evidence is not conclusive whether or not the job content of the "clerks" and "storekeepers" has so materially changed since the classifications were established in their present position to justify the upgrading here requested. A job evaluation made on the same basis as the classifications were originally established could most effectively determine this issue.

It is the opinion of the Board that the Union's request should be denied.

164 37. **Article XVI, Section A, Sub-Section 134.**

The Union proposes, in addition to a general wage rate increase, a reclassification upward of the "Freight Office" clerks (Grade A—old—$240.75 per month top) to the "Telephone Information Clerks" classification (old—$282.75 per month—top).

The **Company** originally proposed no changes. In its revised conditional proposal it suggested the following changes in the old clause:

(a) incorporate into the agreement only the "hourly rates."

(b) omit rates for terminal "handymen" and "janitor"; also general office "janitress."

(c) delete "note" which provides that the "monthly rates" are based on 44 hours per week.

There is no competent evidence to suggest that any of the changes here indicated are necessary or advisable.

It is the opinion of the Board that except for the wage rates and the weekly hour base for the monthly wages, the terms of the old provision should be continued.

38. **Article XVI, Section B, Sub-Section 136** (Traffic Department).

The **Union** proposes:

(a) Substitution of the word "because" in lieu of old "on account of" (relating to the application of seniority when work is "curtailed").

(b) Delete the provision that employees who "are off the payroll for more than one (1) year" have no further right to "re-employment" by the Company.

Nothing in the record indicates that these demands are either necessary or advisable.

It is the opinion of the Board that the Union's request should be denied.

39. **Article XVI, Section D, Sub-Section 139** (Traffic Department).

The **Company** originally proposed no change. In its revised proposal it **deleted** the entire

paragraph (deals with Company's right to require "monthly salaried" employees to put in "reasonable overtime" or "off schedule" work).

The deletion was based on the proposal that all monthly salaries be reduced to hourly wages and be so shown in the contract.

It is the opinion of the Board that the request to delete this paragraph should be denied.

40. **Article XVI, Section D, Sub-Section 140** (Traffic Department).

The **Company** originally proposed that overtime be paid after "8 hours per day." (Old—from 40 to 44 hours per week, one-half time [in addition to the straight time already in the monthly rate for 44 hours per week]; time and one-half after 8 hours per day or 44 hours per week). It also proposed to delete the provision that it will not be required to furnish overtime work.

165 Its revised proposal would pay time and one-half after 8 hours per day or 40 hours per week.

The object of the parties is to effectuate the 8-hour day and 5-day week.

It is the opinion of the Board that the terms of the old clause should be amended to incorporate the 8-hour day and the 40-hour week.

41. **Article XVI, Section D, Sub-Section 141** (Traffic Department).

The **Union** proposed:

(a) "2 days off" each week (old—1 day).

(b) New provision to pay time and one-half for all Saturday, Sunday and Holiday work.

The **Company's** original proposal retained the old "1 day off each week." Its revised proposal removed its objection to the Union's proposed "2 days off each week."

The "2 days" off each week establishes the 5-day week which the parties are seeking to accomplish. The evidence does not show that time and one-half for Saturdays, Sundays and Holidays is customary or fairly common either in the transit industry or in other enterprises with similar week-around operation needs.

It is the opinion of the Board that:

(a) The old clause should be amended to provide for 2 days off each week.

(b) The Union's proposal for time and one-half for Saturdays, Sundays and Holidays work, as such, be denied.

42. **Article XVII, Sub-Section 142** (Transportation Department).

The **Union** proposed to extend the old **free** city and suburban (orange lines) transportation provision to include the "Wisconsin Motor Bus" (Green Bus) lines.

The record shows that no free passes are issued on these lines. The Company executives have no such passes. There are generally parallel orange lines on which the employees can ride on their present passes. The Company agreed to make some adequate arrangement to provide free rides on this line for orange line operators whose work assignment is on the Green Bus lines.

It is the opinion of the Board that the Union's request should be denied.

43. **Article XIX, Sub-Sections 144 and 146.**

The old clause relating to "vacations," when compared with the Union's and the Company's proposals, produces the following results:

Service Period	Old Clause	Union Proposal	Company Proposal
1-2 years	1 week	7 da.—8 hr. day	40 hours
over 2 years	2 weeks	14 da.—8 hr. day	80 hours
over 15 years	2 weeks (union proposal)	21 da.—8 hr. day	80 hours
over 25 years	3 weeks	21 da.—8 hr. day	120 hours

166 Under the old clause, paragraph 146, a "week", for vacation purposes, was "the current scheduled hours included in the vacation period" except that for "trainmen and bus operators" 48 hours is the time applied.

The current average hours worked by trainmen and bus operators is 45.8 hours per week. This schedule was effected in the light of the old "44 hours per week guarantee." On that basis, when runs are cut so as to adapt them to the 40-hour week, the average hours per week will be about 42.

The vacations here in question will generally be taken during the transition period to the 40-hour week. The Company estimates that the change-over may not be completed before September 15, 1949.

About one-third of the Amalgamated larger transit companies and the key midwest companies have a 3-week vacation program. In those cases the initial requirements are generally either 15 years or 20 years. Three-week vacations in other industries is negligible.

It is the opinion of the Board:

(a) That to maintain, so far as possible, a parallel relationship between the actual hours worked (during the transition from the present work schedules to the 40-hour week) and the vacation pay, trainmen and bus operators should receive 1949 vacation pay on the basis of 45 hours per week at straight time.

(b) That the terms of the old clause should be retained in every other respect.

44. **Article XX, Sub-Sections 153 and 154** (Sick Leave and Excused Absences).

(Sick leave and excused absences for hourly and monthly paid employees.)

The Union proposed:

(a) To delete, wherever it appears, the word "working" in the phrase "35 **working** days".

(b) Delete old sub-paragraph (e) to eliminate the **one day waiting period** before sick benefits are payable.

(c) Correct later cross references accordingly.

The proposal to compensate men for sickness even on off days would substantially increase costs to the company without serving the purpose of sick leave pay, which is to compensate for time lost without fault by the employee.

The request is denied.

The proposal to eliminate the one-day waiting period before sick benefits are payable is based on the claim that men now work while ill rather than lose a day's pay. This assertion, while perhaps true to a very limited extent, was supported by no evidence. The "one-day waiting period" rule was effective in the prevention of sick leave abuse. The union's request is denied.

45. **Article XXII, Sub-Section 158.**

This clause in the old agreement provides for a minimum of 44 hours of work per week "up to and including December 31, 1948" and provides
167 for "3 off days every 2 weeks".

It is the opinion of the Board that this clause is obsolete and should be deleted.

46. **Wages**—General.

There are approximately 2,700 employees in the bargaining unit, about 69% of whom are operators of streetcars, motor buses and track-

less trolleys. These operators are the predominant group, and traditionally in the transit industry, their wages usually establish a precedent for the wages of the other employees of the companies involved. This is definitely the case in Milwaukee.

The operator's job has certain characteristics which will be briefly mentioned here. The position does not require the type of skill resulting from long, specialized training such as the several years of apprenticeship normally required in so-called skilled occupations. The training period for an operator is a minimum of eighteen days, and a maximum of thirty days if he is trained for operation of buses, trackless trolleys and streetcars. It is assumed that his skill increases for one year, after which he receives his maximum rate of pay.

At the same time the operator must possess certain native skills and qualities which are not normally required in unskilled jobs. The mechanical skill required is that of a good driver of a vehicle. The prospective operator must have a driver's license and must have the driving ability required by operators of trucks and passenger automobiles. The operation of a streetcar or a trackless trolley is somewhat different from operation of other vehicles, but the same amount of judgment, ability to make a quick decision, reaction time and other such characteristics are important.

A second important requirement of an operator is ability to deal with the public. He daily

comes in contact with hundreds of people of all types, and he engages in a business transaction with each of them. As a consequence, he may have unpleasant experiences with passengers who are unreasonable, intoxicated, ill, belligerent or otherwise offensive. The responsibility of dealing with all types of people and representing the Company in its relation with them, having in mind the Company's high degree of responsibility for its passengers, requires in the operator a more than average degree of emotional stability, good judgment, tact and resourcefulness.

The operator's job is also characterized by a health hazard created by temperature and humidity extremes and constant exposure to crowds of people, many of whom suffer some stage of a contagious disease. There is no showing of a higher incidence of disease among operators than among others of their age and sex group, but some health hazard is obvious.

Another characteristic of the job is the undesirable hours of work required. The riding habits of the public vary from season to season, day to day and hour to hour, and the Company is required to furnish service twenty-four hours a day seven days a week in conformity with these habits. Week-day hours are characterized particularly by peak loads early in the morning and late in the afternoon, and no matter how skillfully the work is scheduled, the operators generally cannot work the same hours as do men in most other occupations, though after

years of service the right of seniority produces priority claim to the better working hours.

The operator's job both in Milwaukee and in other cities is also distinguished by a relative lack of opportunity of advancement within the field. There are few closely related occupations except those involving the same type of work and allowing no greater opportunity.

168 As compensation for some of the unfavorable aspects of the position, the operator does enjoy a steadiness of employment and ability to work for many years not found in most other occupations. This job security was demonstrated in Milwaukee by the fact that during the recent depression not a single man was laid off because of lack of work. The attraction of this feature of the work is evident from the relatively low quit rate of operators, particularly those who have acquired seniority and are in the higher age groups. Approximately 440 former employees were drawing pensions in 1948. This job security also characterizes other employees in the unit whose quit rate is also very low in spite of the fact that other comparable jobs are available to them.

Another advantage of employment in this industry is the relatively large total of fringe payments which in effect add thirty-six cents per hour to direct pay. This is one of the highest rates in the country and must be taken into account when wage adjustments are considered.

A factor deserving of some mention is the Company's "ability to pay."

We deem a company's "ability to pay" as measured by the financial results of its operations to be a relevant factor within definite limitations in the determination of wages and working conditions. No company can expect to purchase labor substantially below prevailing market rates just because it is not making an adequate profit, nor can labor properly ask one company for compensation substantially above a top market rate because it is operating at a relatively high profit. But the market in transit wage rates and working conditions is not measurable with mathematical exactness, since there is some similarity, but no uniformity in contracts. A company more prosperous than others in the field should expect to be somewhat more liberal in wages and working conditions than a company in difficulties.

Since it took over this property in 1938 the operations of the Transport Company have not been notably profitable. Its 1948 operations resulted in a deficit, even though a temporary fare increase was in effect during four months of the year. Any substantial increase in wages will probably result in a deficit in 1949 unless a further fare increase is granted.

The monopoly position of transit companies makes "ability-to-pay" less of a rigidly limiting factor than it may be in a competitive business. A Wisconsin transit company may apply to the

Public Service Commission for a fare increase to enable the company to earn a fair return on its investment as well as to pay additional costs of operation. But the long delays before fare increases become operative and the fact that higher fares encourage competition from automobiles and increased walking habits limits the effectiveness of fare increases.

We do find, however, that even with the recent increase, Milwaukee's fares are not higher than those of comparable cities. If value of the service to the public is considered, as it must be, another fare increase based in whole or in part on increased labor costs may be necessary. Certainly increased labor costs in this situation cannot be denied merely because fare increases may thereby become necessary.

A review of the wage history of the employees in the Milwaukee transit property indicates that for the last ten years or more prior to the June, 1948, contract, they maintained or slightly improved their wage relationship relative to transit employees in other cities and production workers in Milwaukee County. For that reason this board feels that the main emphasis in any examination of their present position must be on the period beginning in May, 1948, even though reference to the wage history before that date is helpful.

Since May, 1948, the cost of living continued to rise until August or September, 1948, and then began to decline, and this decline has brought Milwaukee consumers' prices slightly under their

May, 1948, level, and the decline shows no definite signs of stopping. During the war and the
169 post-war inflationary period in which prices were constantly rising, wages maintained a fairly close relationship to rising prices, and the increases in wages were often related to increases in the cost of living since the last previous settlement or arbitration. It does not necessarily follow, however, that stabilization or decline in the price level will cause a corresponding general decline in hourly wages. It is too early at this date to foresee clearly what effect the halt in increasing living costs will have on wages generally or in this particular industry, since very few labor agreements have been made, particularly in the transit industry, since the decline in living costs became noticeable.

This board seriously doubts that the mass of labor agreements in the United States and in the transit industry will cut wages to match price cuts, at least while the decline in the cost of living continues its present rather moderate downward trend. Wage increases in the transit industry since May, 1948, have been in the neighborhood of eight to fifteen cents per hour, and the two most significant settlements—significant because made during the 1949 period of declining prices—have been Toledo and Philadelphia, both of which granted an eight-cent an hour increase, Philadelphia after a strike and Toledo by negotiation. Though St. Louis granted a thirteen-cent increase effective January 1, 1949, there had been no increases in 1947 or 1948, so the

thirteen-cent increase probably included an overdue 1948 increase.

The absence of any large group of employees in the community doing the same or similar work and exhibiting like or similar skills under the same or similar working conditions requires that relatively greater weight be given to wage rates and working conditions in the rest of the transit industry. We find that in midwestern cities with populations exceeding 250,000, wages have increased 11.71 cents an hour on the average since January, 1948, and in all cities in the United States exceeding 500,000 population represented by the Amalgamated, wages have increased 11.38 cents an hour during that period.

Comparison of wage rates or other conditions of employment of employees of the company with those prevailing generally in Milwaukee shows that the 1946 average for production workers was $1.12 per hour as against $1.13 for operators. In January, 1949, production workers received $1.473 and operators $1.36. An increase of approximately twelve cents per hour would, therefore, be necessary to restore the 1946 relationship.

If we examine wage increases of Milwaukee production workers since May, 1948, we find an increase to January, 1949, of 8.9 cents per hour.

In making a wage determination we are also confronted with the question of whether an increase shall be in the form of an equal number of cents per hour or of a percentage of present

wages. We believe that a percentage increase will be more equitable in the situation here involved. We have two reasons for this conclusion.

The first reason is that the many and substantial increases granted during the recent period of inflation have seriously narrowed the gap between men in the lower pay categories and those in the higher brackets, and if there is any valid reason for pay differentials, it follows that differentials cannot be too seriously narrowed without creating inequities.

The second reason for a percentage increase is that a substantial portion of the increase herein granted is compensatory for loss of the overtime guaranty. We find that the Company will, after the transitional period, realize a substantial saving, and the increase herein granted includes compensation to employees for this saving. Higher paid employees obviously lose more in cents per hour when overtime is reduced than do lower paid employees. A "compensatory" increase of an equal number of cents per hour, which gives one man part of the saving made on another, would therefore be highly unfair.

170 After giving full consideration to all of the factors mentioned in Section 111.57 of the Statutes, as well as to other related considerations, we find that a fair and equitable wage adjustment for the employees in the bargaining unit would be accomplished by a general wage and salary increase of 9 per cent. Half of such increase shall be made retroactive to January 1,

1949, and the balance shall become effective on July 1, 1949.

171 DECISION AND ORDER.

Upon the foregoing findings, it is ordered:

General.

1. That all the Articles, Sections, Subsections and provisions of the agreement between the parties signed on June 11, 1948, continue to control the relations between the parties except as herein specifically provided otherwise. Provided, however, that this order shall be in effect until one (1) year from the date of its filing with the Clerk of the Circuit Court of Milwaukee County unless changed by mutual consent or agreement of the parties.

2. That any provision, or part thereof, of the old agreement which is not consistent with any part of the new provisions hereinafter prescribed shall be superseded by the new provision.

3. Any dispute involving the application of this order or respecting the integration of its provisions into the new agreement shall be settled through the grievance procedure.

4. The terms of the overtime provisions established in the old agreement and applicable to the various departments or job classification subject to the agreement shall continue in effect until June 30, 1949. The new provisions herein specified shall be effective commencing July 1, 1949.

5. The clauses in the agreement providing in effect that the employees shall take off on their scheduled "off-days" shall not be effective until September 15, 1949.

"Exhibit A" Amendments.

Article XIII, Section C, Subsection 12, shall read:

> All trainmen and bus drivers holding regular runs shall be allowed two days off each week.
>
> Off-day schedules shall be discussed with the Association before they are put into effect and shall be subject to the grievance procedure.

Article XIII, Section C, Subsection 14, shall read:

> The spread of all paid-for time in a day's work shall be limited to the following provisions which shall be applied to the entire system.
>
> (a) 55% of all runs must be completed within nine and one-half (9½) hours.
>
> (b) Not over 12% of the total runs shall exceed twelve and one-half (12½) hours, and no run shall exceed thirteen (13) hours.

Article XIII, Section C, Subsection 15, shall read:

One piece runs shall not be less than 50 per cent of the total regular runs except during winter when they shall not be less than forty-five (45) per cent. Such runs shall be proportioned among the stations as equally as practicable.

172 Article XIII, Section C, Subsection 20, shall read:

All trainmen and bus men shall be guaranteed at least the number of paid-for hours in their run when they:

(a) Are removed temporarily from their regular run for use on some other Company work.

(b) Practice for a different job.

(c) Are required to report to the Training Division.

Article XIII, Section C, Subsection 42 shall read:

The Company shall furnish the Association with copies of work assignment sheets, headway sheets and individual run schedules (time paddles) a reasonable time prior to picking.

Article XIII, Section G, Subsection 59, shall be modified to change the monthly rates to 40/51ths of the figures stated and shall repeat the hourly equivalent figures, and shall further read as follows:

The above monthly rates are straight time rates based on forty (40) hours of work per week.

Station clerks, supply car clerks, and bulletin clerks shall be paid overtime for all time worked in excess of eight hours (paid-for time) per day or forty hours per week (exclusive of allowances for sick leave, vacations or premium pay for holidays). There shall be no duplication of the daily and weekly time and one-half rate figured on the above basis.

Station clerks working regular late night shifts, starting at or about 9:30 P. M. will be paid a night shift differential of two (2) cents per hour for all hours worked on such shifts.

Clerks shall be required to take at least three (3) days off each two (2) weeks. Scheduling of days off shall be arranged at each station and shall be mutually agreed to between the Division Superintendent and the Association.

Part-time clerks, when taking the place of regular station clerks, shall be paid one dollar, forty-five cents ($1.45) per hour, and when taking the place of the bulletin clerk, one dollar, forty-nine and one-half cents ($1.495) per hour.

Seniority shall be as per amended agreement dated July 2, 1945, or any subsequent agreements.

(The above rates shall be subject to the general increase granted.)

Article XIV, Section A, Subsection 70, shall read:

An additional twenty-five (25) cents per hour shall be paid to employees who work with freshly creosoted ties or ties and blocks soaked with oil or naphtha solution.

Article XIV, Section A, Subsection 71, shall read:

Men doing paving work shall be allowed five (5) cents additional per hour in addition to their regular rate while doing such work. Men operating concrete breakers and
173 jack hammers shall be allowed five (5) cents additional per hour above their regular rate while doing such work.

Article XIV, Section A, Subsection 71 (a), shall read:

A ten (10) cent per hour premium shall be paid to truck drivers while operating four-wheel-drive truck on ice cutting or grading work.

Article XIV, Section C, Subsection 85, and Article XVI, Section C, Subsection 138, shall both read as follows:

The Company shall provide safe, healthful working conditions at all times. Whatever equipment, machinery, etc., which the Company provides, shall be in good working condition. The Association agrees that its members will use all necessary safeguards furnished and will work safely at all times.

Article XIV, Section D, Subsection 92, shall be modified to change the monthly rates to 40/44ths of the figures stated and shall substitute the third year figures for Section Foreman A and B for the second year figures respectively, said second year figures to be deleted; and such subsection to be otherwise unchanged except for the substitution of the following:

> "Note: The monthly rates stated above for Yard Foreman and Section Foreman are the straight time rates for a forty (40) hour week. Yard Foreman and Section Foreman shall be paid overtime for all time worked in excess of forty (40) hours per week, and the hourly rate, for purposes of computing overtime, is to be determined by applying twenty-three (23) per cent to the employee's total monthly earnings and dividing the product by the regular scheduled hours, i. e., forty hours per week.
>
> The subsection is otherwise unchanged. It should be particularly noted here that acceleration and recomputation of monthly pay do not exempt these figures from the general increase herein granted.

Article XIV, Section E, Subsection 100, shall be revised as follows:

> The words, "forty-four (44)", are deleted, and the words, "forty (40)" substituted. The language is otherwise to remain unchanged.

Article XV, Section C, Subsection 119, shall be revised as follows:

The words, "forty-two (42)", are deleted wherever they appear, and the words, "forty (40)", substituted. The language is otherwise to remain unchanged.

Article XVI, Section A, Subsection 134, shall be revised to the following extent:

All monthly rates therein set forth shall be reduced one-eleventh (1/11th), and after such reduction, shall constitute the straight time rates based on a forty (40) hour work week. The "Note" provision is deleted. Such revised rates shall, of course, be subject to the general increase herein granted.

Article XVI, Section D, Subsection 140, shall read:

Employees receiving the monthly rate shall be paid overtime for all time worked in excess of eight (8) hours per day and forty (40) hours per week, but there shall
174 be no duplication of the daily and weekly overtime.

The Company shall not be required to furnish work in excess of straight time hours when employment conditions permit the elimination of overtime.

Article XVI, Section D, Subsection 141, shall read:

Employees shall, so far as practicable, be allowed two (2) days off per week.

Article XIX, Subsection 146, shall be revised as follows:

The words, "forty-eight (48)", are deleted, and the words, "forty-five (45)", substituted. Except for this change, the subsection is unchanged.

Article XXII, Subsection 158, is deleted.

Article XIII, Section D, Subsection 35, shall read:

Extra men shall be given at least sixty-seven (67) paid hours of work for each two-week pay roll period, allowing no more than two (2) days off per week.

General Wage Amendment.

All hourly and monthly employees represented by the union are granted a nine (9) per cent wage increase, half of which shall be effective retroactively to January 1, 1949, and the balance shall be effective July 1, 1949, and thereafter. Computation shall be based on the hourly rate of employees paid on an hourly basis and the monthly rate of the monthly employees, and fractions of a cent shall be ignored unless they constitute a half (½) cent or more, in which case the full cent shall be paid. All wage tables contained in the agreement of June 11, 1948, as amended by this order shall be amended by the substitution of figures nine (9) per cent higher, adjusted to the nearest full cent as hereinbefore provided.

Interpretation.

Any conflict between any specific provision of the June 11, 1948, agreement as herein modified and the general intent of this order shall be decided in such a way as to give effect to the general intent.

Dated April 9th, 1949.

Board of Arbitration,

J. Martin Klotsche,
H. Herman Rauch,
Carl J. Ludwig,
Chairman.

175 Cover.

176 Cover.

177 **Evidence Taken Before Board of Arbitration.**

177-190 Index and Witnesses.

191 Mr. Previant: I have some affidavits here I want to file. This Affidavit is supplementary to some other Affidavits which have already been filed in this matter.

Chairman: Are both sides ready?

Mr. Prosser: We are ready.

Mr. Oliver: Mr. Chairman, this matter to
192 which Mr. Previant referred is something that should be taken care of as the hearing opens.

Mr. Chairman: You want that statement of yours in the record, Mr. Previant?

Mr. Previant: Yes, I would like it to be a part of the record. It is in the nature of a supplementary affidavit in support of various objections which we have filed prior to the hearing today and objecting to the proceedings which we want to make part of the record here. And before we proceed today——

Mr. Rauch: Do you have just one copy?

Mr. Previant: I will complete the copies and give one to each member of the Board. Before we proceed today we would like to renew again, and make clear, our position for the purposes of the record, and that is that we are not participating in these proceedings voluntarily, but under the duress and coercion of the Wisconsin Law; that we are participating without prejudice to and without waiver of the various motions and objections which have heretofore been filed in this cause from the first date that the Wisconsin Employment Relations Board attempted to assert jurisdiction over the matter.

227-1833 **Testimony and Evidence before the Board of Arbitration.**

1834 Cover.

1835 **Admission of Service.**

1836-1837

SUPPLEMENTAL AFFIDAVIT OF GEORGE KOECHEL

Submitted at First Meeting of Board of Arbitration.

State of Wisconsin, } ss.
Milwaukee County. }

George Koechel, being first duly sworn, on oath deposes and says that he is President of Division 998, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, affiliated with the American Federation of Labor (hereinafter referred to as the Union), and that he makes this Supplemental Affidavit on behalf of such organization and the members thereof, being first duly authorized so to do;

That this affidavit is supplementary to the affidavits previously filed in this cause on the 5th day of January, 1949, and on the 3rd day of February, 1949;

That he repeats and reaffirms the allegations contained in such affidavit and incorporates the same herein;

That on February 9th, 1949, the Union filed with the National Labor Relations Board a charge alleging that the Milwaukee Electric Railway and Transport Company had committed and was continuing to commit unfair labor prac-

tices under the provisions of Sections 8 (a) (1) and (5) of the National Labor Relations Act based in part upon the conduct of the Company previously set forth in the affidavits which have already been filed in this cause; that the National Labor Relations Board has assumed jurisdiction over such matters and at the present time is conducting an investigation into such matter.

George Koechel.

Subscribed and sworn to before me this 1st day of March, A. D. 1949.

David Previant,
Notary Public, Milwaukee County,
Wisconsin.

My commission expires May 7, A. D. 1950.

1843–1844 **JUDGMENT.**

(Venue and Title Omitted.)

The above entitled matter having come on for hearing on the 2nd day of February, 1950, before the court without a jury, upon petition to review and set aside all orders, decisions and awards of the Wisconsin Employment Relations Board and the respondents Carl Ludwig, H. Herman Rauch and Martin Klotsche in the proceedings commenced by the petition to the respondent board on December 31, 1948, for appointment of a conciliator; and the respondent board having caused return to be made of the entire record

in said matters; and the petitioners appearing by David Previant, and F. H. Prosser appearing for the respondent Milwaukee Electric Railway & Transport Co., and Beatrice Lampert appearing for the other respondents; and the court having heard the arguments and considered the briefs of counsel, and being fully advised in the premises; and having taken the matter under advisement, and having, on the 17th day of February, 1950, filed its decision and direction for denial of the petition,

Now, Therefore, on motion of Beatrice Lampert,

It Is Ordered, Adjudged and Decreed that the petition in the above entitled action, to review and set aside all orders, decisions and awards of the Wisconsin Employment Relations Board and Carl J. Ludwig, J. Martin Klotsche and H. Herman Rauch pursuant to petition to said board on December 31, 1948, for appointment of a conciliator, be and the same is hereby denied and dismissed.

Dated February 23, 1950.

By the Court:

Roland J. Steinle,
Circuit Judge.

1845 Cover.

1846 **Notice of Entry of Judgment.**

1847-1848 **Judgment.**

1849 Cover.

1850–1852 **Notice of Appeal and Waiver of Undertaking.**

1853 Cover.

1854 **Return on Appeal to Supreme Court.**

INDEX TO APPENDIX.

[fol. 231] Pleas before the Supreme Court of the State of Wisconsin at a term thereof begun and held at the Capitol in Madison, the seat of government of said State on the Second Tuesday, to-wit: the Ninth day of August, A. D. 1949.

Present: Hon. Marvin B. Rosenberry, Chief Justice, Hon. Oscar M. Fritz, Hon. Edward T. Fairchild, Hon. Henry P. Hughes, Hon. John E. Martin, Hon. Grover L. Broadfoot, Hon. Timothy Brown, Justices.

Be it remembered that heretofore, to-wit: on the twenty-second day of March in the year of our Lord One Thousand Nine Hundred and Fifty came into the office of the Clerk of the Supreme Court of the State of Wisconsin, the Amalgamated Association of Street Electric Railway and Motor Coach Employees of America, Division 998, George Koechel and Charles Brehm, individually and in their representative capacity, by their attorneys and filed in said Court their certain Notice of Appeal, according to the statute in such case made and provided, and also the Return to such appeal, of the Clerk of the Circuit Court of Milwaukee County, in said State, in words and figures following, that is to say:

[fol. 232] STATE OF WISCONSIN, CIRCUIT COURT, MILWAUKEE COUNTY

Filed Mar. 3, 1950. Fred J. Jaeger Clerk.

Case No. 220-324

NOTICE OF APPEAL

Filed Mar. 22, 1950. Arthur A. McLeod, Clerk of Supreme Court, Madison, Wis.

AMALGAMATED ASSOCIATION OF STREET ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, Division 998, George Koechel and Charles Brehm, individually and in their representative capacity, Petitioners-Appellants

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, Henry Rule and J. E. Fitzgibbon, individually and as Members of the Wisconsin Employment Relations Board; Carl Ludwig, H. Herman Rauch, and Martin Klotsche, individually and as members of a Board of Arbitration, and The Milwaukee Electric Railway & Transport Company, a Wisconsin corporation, Respondents

To Thomas E. Fairchild, Attorney General; Stewart G. Honeck, Deputy Attorney General; Beatrice Lampert, Assistant Attorney General, Attorneys for Wisconsin Employment Relations Board, and all other Respondents, excepting The Milwaukee Electric Railway & Transport Company; Shaw, Muskat & Paulsen, Attorneys for The Milwaukee Electric Railway & Transport Company and Fred J. Jaeger, Clerk of the Circuit Court for Milwaukee County.

You will please take notice that the petitioners above named hereby appeal to the Supreme Court of the State of Wisconsin from the Judgment entered in the above entitled matter in the Circuit Court for Milwaukee County, Wisconsin, on the 23rd day of February, A. D. 1950, and from the whole thereof.

Dated at Milwaukee, Wisconsin, this 3rd day of March, A. D. 1950.

Padway, Goldberg & Previant, Attorneys for Petitioners and Appellants.

Copy received March 3, 1950. Thomas E. Fairchild, Attorney General, Beatrice Lampert, Assistant Attorney General.

Service admitted this 3rd day of March, 1950.

Fred J. Jaeger, Clerk of Circuit Court, Milwaukee County, Wis.; By Ray L. Dundas, Deputy Clerk.

[fol. 233] STATE OF WISCONSIN, CIRCUIT COURT, MILWAUKEE COUNTY

Filed Mar. 3, 1950. Fred J. Jaeger Clerk.

Case No. 220-324

WAIVER OF UNDERTAKING

Filed Mar. 22, 1950. Arthur A. McLeod, Clerk of Supreme Ct. Madison, Wis.

AMALGAMATED ASSOCIATION OF STREET ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, Division 998, George Koechel and Charles Brehm, individually and in their representative capacity, Petitioners-Appellants

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, Henry Rule and J. E. Fitzgibbon, individually and as Members of the Wisconsin Employment Relations Board; Carl Ludwig, H. Herman Rauch, and Martin Klotsche, individually and as members of a Board of Arbitration, The Milwaukee Electric Railway & Transport Company, a Wisconsin corporation, Respondents

The undersigned herewith waive the filing and serving of an undertaking for costs on appeal in the above entitled action as required by the Wisconsin Statutes.

Dated March 3, A. D. 1950.

Thomas E. Fairchild, Attorney General; Beatrice Lampert, Assistant Attorney General, Attorneys for Respondents, Excepting The Milwaukee Electric Railway & Transport Company; Shaw, Muskat & Paulsen, Attorneys for Respondent, The Milwaukee Electric Railway & Transport Company.

[fol. 234] And afterwards to-wit on the 2nd day of May, A. D. 1950, the same being the 63rd day of said term, the judgment of this Court was rendered in words and figures following, that is to say:

Milwaukee Circuit Court, Opinion by Justice Broadfoot

AMALGAMATED ASSOCIATION OF STREET ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, Division 998, George Koechel and Charles Brehm, individually and in their representative capacity, Appellants,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, Henry Rule and J. E. Fitzgibbon, individually and as Members of the Wisconsin Employment Relations Board; Carl Ludwig, H. Herman Rauch, and Martin Klotsche, individually and as members of a Board of Arbitration, and the Milwaukee Electric Railway & Transport Company, a Wisconsin corporation, Respondents

This cause came on to be heard on appeal from the judgment of the Circuit Court of Milwaukee County and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the Circuit Court of Milwaukee County, in this cause, be, and the same is hereby, affirmed, with costs of the Milwaukee Electric Railway & Transport Company against the said appellants taxed at the sum of One Hundred Twenty-two Dollars and Fifty Cents ($122.50).

[fol. 235] No. 235

AUGUST TERM, 1949

STATE OF WISCONSIN : IN SUPREME COURT

AMALGAMATED ASSOCIATION OF STREET ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES et al., Appellants,

v.

WISCONSIN EMPLOYMENT RELATIONS BOARD, et al., Respondents

Appeal from a judgment of the circuit court for Milwaukee county: ROLAND J. STEINLE, Circuit Judge. *Affirmed.*

On December 31, 1948, the Milwaukee Electric Railway and Transport Company (hereinafter referred to as the company) filed a petition with the Wisconsin Employment Relations Board (hereinafter referred to as the board) for the appointment of a conciliator to attempt to effect a settlement of a labor dispute between the company and the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Division 998, A. F. of L. (hereinafter referred to as the union.)

The petition alleged that a general labor agreement between the company and the union was due to expire at midnight, December 31, 1948; that the parties had at-
[fol. 236] tempted in good faith to negotiate the terms of an agreement for the year 1949, but had not been able to reach an agreement thereon; that the collective bargaining negotiations had reached an impasse and stalemate; that the parties will be unable to effect a settlement of their dispute without the intervention, aid and assistance of the conciliation and/or arbitration processes and procedures provided for in secs. 111.50 through 111.65 of the Wisconsin statutes, and that the company believed that the dispute, if not settled, will cause, or is likely to cause, an interruption of essential public passenger transportation services.

The board ordered a public hearing on the petition to be held on January 5, 1949. The union appeared and moved for the dismissal of the petition and that all further proceedings be terminated because the sections of the statute referred to in the petition were unconstitutional and void. The board overruled the union's motions and appointed a

conciliator. Thereafter the parties met with the conciliator appointed by the board. The union at said meeting, and at subsequent meetings with the conciliator and the arbitrators thereafter appointed, reiterated its objections to the procedure for the purpose of preserving its rights in the matter and stating that its appearances were to be without prejudice to its objections to the validity of the law.

On January 31, 1949, the conciliator reported to the board that he had been unable to effect a settlement of the dispute within the time allotted. The board thereupon [fol. 237] appointed a panel of five persons and directed that the parties appear before the board on February 3, 1949, for the selection of three members of the panel to act as a board of arbitration. The board of arbitration held hearings and on April 9, 1949, issued its decision and order, which was filed with the clerk of the circuit court for Milwaukee county on April 11, 1949. The union, together with George Koechel, its president, and Charles Brehm, a member of the bargaining committee of the union, individually and in their representative capacities, then petitioned the circuit court for Milwaukee county to review and set aside all orders of the board and of the board of arbitration, composed of Carl Ludwig, H. Herman Rauch and J. Martin Klotsche. The board and its individual members, the three arbitrators, and the company were named as respondents in the petition. From a judgment of said circuit court dated February 23, 1950, denying the relief sought in the petition, the petitioners appeal.

[fol. 238] BROADFOOT, J. This case and the case of *Wisconsin Employment Relations Board* v. *Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Division 998, et al, ante* p. ——, N. W. (2d) ——, were argued together upon the appeal. With one exception the contentions of the appellants in this case were raised in the companion case and were determined therein.

The remaining contention is that the statutes involved are in violation of Art. VII, sec. 16 of the Wisconsin constitution which reads as follows:

> "The legislature shall pass laws for the regulation of tribunals of conciliation, defining their powers and duties. Such tribunals may be established in and for

any township, and shall have power to render judgment to be obligatory on the parties when they shall voluntarily submit their matter in difference to arbitration, and agree to abide the judgment or assent thereto in writing."

The appellants contend that the statutes under which the proceedings were held (secs. 111.50 through 111.65) create tribunals of conciliation and arbitration within the meaning of said constitutional provision; that tribunals created under said provision can only render a binding judgment when the parties have voluntarily submitted their matters in difference; and it follows that said statutes are therefore violative of the constitutional provision as they provide for compulsory arbitration.

In *Borgnis* v. *Falk*, 147 Wis. 327, 133 N. W. 209, it was pointed out that this section of the constitution appears in Art. VII dealing with the judiciary; that administrative [fol. 239] agencies are not courts, and this provision therefore is not applicable to orders and awards of administrative agencies. For the same reasons we hold that secs. 111.50 through 111.65, Stats. are not violative of said constitutional provision.

By the Court.—Judgment affirmed.

[fol. 240] State of Wisconsin, In Supreme Court, August Term, 1949

No. 235

Filed May 20, 1950. Arthur A. McLeod, Clerk of Supreme Court, Madison, Wis.

Amalgamated Association of Street Electric Railway and Motor Coach Employees of America, Division 998, George Koechel and Charles Brehm, individually and in their capacity, Petitioners-Appellants,

vs.

Wisconsin Employment Relations Board, L. E. Gooding, Henry Rule and J. E. Fitzgibbon, individually and as Members of the Wisconsin Employment Relations Board; Carl Ludwig, H. Herman Rauch, and Martin Klotsche, individually and as members of a Board of Arbitration and The Milwaukee Electric Railway & Transport Company, a Wisconsin Corporation, Respondents

Motion for Rehearing

Now come the Appellants above named, and respectfully move this Honorable Court to grant a rehearing in the above entitled case, on the grounds and for the reasons to be assigned in the printed brief which will be filed in support hereof.

Dated at Milwaukee, Wisconsin, May 16th, 1950.

Padway, Goldberg & Previant, Attorneys for Appellants.

Admission of Service.

Due and personal service of copy of Motion for Rehearing by Appellants, in the above entitled action, is hereby admitted this 17 day of May, A. D. 1950.

Beatrice Lampert, Attorney for Wisconsin Employment Relations Board, and for Members of a Board of Arbitration.

Received copy of within this 16 day of May, 1950.

Shaw, Muskat & Paulsen, Attorneys for Deft. T. M. E. R. & T. Co.

[fol. 241] And afterwards to-wit on the 30th day of June, A. D. 1950, the same being the 81st day of said term, the motions were denied in words and figures following, that is to say:

MILWAUKEE CIRCUIT COURT

WISCONSIN EMPLOYMENT RELATIONS BOARD, Respondent,

vs.

AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, DIVISION 998, et al., Appellants

AMALGAMATED ASSOCIATION OF STREET ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, DIVISION 998, et al., Appellants,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, et al., Respondents

The Court being now sufficiently advised of and concerning the motions of the said appellants for a rehearing in these causes, it is now here ordered that said motions, be, and the same are hereby, denied with $25.00 costs in each case.

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 241] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

No. 330

ORDER ALLOWING CERTIORARI—Filed November 6, 1950

The petition herein for a writ of certiorari to the Supreme Court of the State of Wisconsin is granted. The case is transferred to the summary docket and assigned for argument immediately following No. 302, St. John et al. vs. Wisconsin Employment Relations Board et al. and No. 329, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America et al. vs. Wisconsin Employment Relations Board.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.